

**ARKANSAS DEPARTMENT OF  
HUMAN SERVICES**

**CONTRACT MANUAL**

**OFFICE OF ADMINISTRATIVE SERVICES  
CONTRACT SUPPORT SECTION**

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## Contract Manual Glossary

AASIS	Arkansas Administrative Statewide Information System
AP	Accounts Payable, Office of Fiscal Management, Department of Human Services
AR	Accounts Receivable, Office of Fiscal Management, Department of Human Services
C.O.	Contract Officer
CAP	Corrective Action Plan
CFDA	Catalog of Federal Domestic Assistance
COUGAR	Contract and Grant Management, Tracking, and Reporting system
CRU	Contract Review Unit, Contract Support Section, Office of Administrative Services, Department of Human Services
CSS	Contract Support Section, Office of Administrative Services, Department of Human Services
CSU	Central Support Unit, Contract Support Section, Office of Administrative Services, Department of Human Services
DCCECE	Division of Child Care and Early Childhood Education, Department of Human Services
DCO	Division of County Operations, Department of Human Services
DDS	Division of Developmental Disabilities Services, Department of Human Services
DFA	Department of Finance and Administration
DHHS	Department of Health and Human Services, United States Government
DHS	Department of Human Services
DMS	Division of Medical Services, Department of Human Services
EDS	Electronic Data Systems
FEI	Federal Early Intervention
FOU	Field Operations Unit, Contract Support Section, Office of Administrative Services, Department of Human Services
GSA	General Service Administration, United States Government
IFB	Invitation for Bid
IG	Intergovernmental
IRS	Internal Revenue Service, United States Government
MOF	Method of Finance
OAS	Office of Administrative Services, Department of Human Services
OCC	Office of Chief Counsel, Department of Human Services
OFM	Office of Fiscal Management, Department of Human Services
OSP	Office of State Procurement, Department of Finance and Administration
PASOS	Provider Audit Sign-off Sheet
PCS	Professional/Consultant Services
PEER	Performance Evaluation and Expenditure Review
RFP	Request for Proposal
RFQ	Request for Qualifications
SBS	State Building Services
SSBG	Social Services Block Grant
TEA	Transitional Employment Assistance
TIN	Taxpayer Identification Number
VMX	Voice Mail Exchange

## CHAPTER ONE INTRODUCTION

To carry out some aspects of its mission, the Arkansas Department of Human Services (DHS) uses a statewide network of contracted service providers and grant recipients.

The purpose of this Contract Manual is to provide a common frame of reference for the development of contracts and grants. It is based on federal and state directives, as well as “best practices” which have been standardized for use by DHS program divisions/offices.

**The essential elements of each agreement are based on mutually binding obligations between the two contracting parties: the service provider (or grant recipient) and the applicable DHS program division/office, using funds appropriated to carry out the program responsibilities of that division/office.**

The Office of Chief Counsel (OCC) provides legal advisory concerning format options, procurement methods, service performance provisions, and any unique terms and conditions or other proposed deviations from standard practices described in this Contract Manual.

The Office of Fiscal Management (OFM) provides financial advisory and technical assistance through a network of divisional chief fiscal officers to assure compliance with the State Accounting Procedures and the Accounting and Budgetary Procedures Law.

The Office of Administrative Services (OAS) directs administrative compliance and provides technical certification that completed agreements meet requirements for coordination through the Office of State Procurement (OSP), Department of Finance and Administration (DFA) and review by the Arkansas state legislature, if necessary.

- DHS requires fair and equal opportunity in employment and service delivery regardless of race, color, religion, sex, age, national origin, political beliefs, or disability that impairs one or more major life activities as defined in the Americans with Disabilities Act.
- DHS requires non-discrimination and equal opportunity in compliance with all applicable federal laws, regulations, executive orders and civil rights rules and regulations.
- Contractors and grantees are required to comply with the promulgated DHS Methods of Administration for recipients of federal financial assistance as directed by the U.S. Department of Health and Human Services (DHHS).

This Contract Manual is provided as an element of technical assistance by the Central Support Unit (CSU) of the Contract Support Section (CSS) of OAS. Please direct all suggestions for corrections, additions and/or updates to:

Contract Support Section/Slot W345  
P.O. Box 1437  
Little Rock, AR 72203  
Telephone: (501) 682-6293

## CHAPTER TWO CONTRACTING FORMATS

### I. **Definitions** (from Rules and Regulations Implementing Governor's Executive Order 98-04 and Act 34 of 1999) (*see Appendix*)

- A. Contract – "Contract shall mean any agreement entered into by and between a state agency and an individual or entity pursuant to which the agency agrees to purchase or lease tangible personal property, real property, or services, or any agreement for the disposal of commodities and services. Contract includes, but is not limited to, awards and notices of award; contracts of a fixed price, cost, or incentive type; contracts providing for the issuance of job or task orders, leases, lease purchase agreements, letter contracts, purchase orders, and professional or consultant services contracts. Contract also includes supplemental agreements with respect to any of these categories."
- B. Grant – "Grant shall mean all appropriations made by the General Assembly from state, federal, or other moneys for educational assistance, welfare grants, rehabilitation services, aid to counties and municipalities, and to all other special appropriations which have for their purpose the appropriating of state, federal, or other moneys for public benefits; provided, however, grants shall not include scholarships to institutions of higher education."

### II. **Contracting Formats for Services**

A purchase of services contract is a legally binding agreement, enforceable by law, between DHS and a provider of services. A provider of services may be a private entity (i.e., an individual, partnership, or corporation) or a public entity (i.e., a governmental agency or entity). The agreement contains mutually binding obligations and a description of the services to be provided with payment contingent on delivery of services. The types of agreements are

#### A. Professional/Consultant Services (PCS) Contracts

- 1. Professional Services contracts are for the purchase of services which are professional in nature and generally require that the provider have some type of specialized training or license/certification (e.g., medical services, social work, therapy, counseling, etc.). Acts 1232 and 1568 of 2001 (*see Appendix*) exempt certain professional services from the Arkansas Purchasing Law and from the contracting requirements found in Chapter 10 of the Accounting Procedures Manual, Part II, (*see Appendix*). Contracts for technical services (e.g., janitorial, pest control, office machine maintenance, trash collection, translator, drug screening, etc.) are not considered professional services contracts and use a different format.
- 2. Consultant Services contracts are utilized when the service to be rendered is primarily the giving of advice by the contractor on a particular problem or problems facing the agency.
- 3. Certain PCS contracts are required to have performance indicators. For specifics about those contracts requiring performance indicators, refer to DHS Policy 1066 or consult with OCC.
- 4. The contractor shall have the relationship of an independent contractor with respect to the agency. The agency shall not exercise managerial control over the day-to-day activities of the contractor, but the contract shall specify the results expected from the services to be rendered by the contractor and the advice or assistance to be provided. (*see Chapter 10 of the Accounting Procedures Manual, Part II in Appendix*)
- 5. **All PCS contracts over \$5,000.00 are reviewed and approved by DFA.**

## CHAPTER TWO CONTRACTING FORMATS

### B. Technical Services Contracts

1. Contracts for technical services are governed by the State Purchasing Law and DHS Administrative Procedures Manual, Chapter 604 (“DHS Purchasing Authority-Contracts and Leases”).
2. Examples of technical services include drug screening, criminal background checks, elevator service, janitorial service, pest control service, translator, and office machine maintenance.
3. Details for development of contracts for technical services are not within the scope of this Manual. For information regarding technical services, contact OAS Commodities Purchasing Unit at 682-6558.

### C. Interlocal Agreements

1. Interlocal Agreements are authorized under Arkansas Code Annotated § 25-20-104 to facilitate cooperation and sharing of resources at the local level between state agencies. (*see Appendix*)
2. Interlocal Agreements are for highly specific situations and the details on their development are not within the scope of this Manual. For information regarding Interlocal Agreements, consult with the division/office liaison in Field Operations Unit (FOU) prior to development.

### D. Voucher Participant Agreements

1. Voucher Participant Agreements are written agreements with a licensed or registered provider of services to clients who have met established eligibility requirements through the program division/office to provide services on an individual basis.
2. This type of agreement requires widespread availability of licensed or registered services.
3. Voucher Participant Agreements are excluded from the requirement of having performance indicators and are not reviewed and approved by DFA.

## III. Other Contracting Methods

### A. Purchase Orders

1. Arkansas Code Annotated § 19-4-1709 (b)(9) (*see Appendix*) provides that **contracts** that do not exceed \$5,000.00 in compensation, exclusive of reimbursable expenses, (**per contractor, per fiscal year, per division/office**) may be executed by purchase order in lieu of the standard form prescribed by the Chief Fiscal Officer of the State, provided that subsequent contracts and amendments with the same provider, individual, or organization during the same fiscal year, regardless of the nature of the contract, are reported to the Chief Fiscal Officer of the State. **NOTE:** This exemption does **NOT** apply to grants.
2. While purchase orders are excluded from the requirement of competitive procurement, it is recommended that some competitive process be used (e.g., three quotes, either verbal or written).

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3. Purchase orders for services should contain the following
  - a. The beginning and ending dates for the service
  - b. The type of service to be purchased
  - c. The rate for the service
  - d. The number of units to be purchased
4. Purchase orders are to be used only when the intent is to purchase \$5,000.00 or less in services (compensation, exclusive of reimbursable expenses.)
5. If an emergency situation exists and a contract for services cannot be prepared in an expedient manner, a purchase order may be utilized. However, the ensuing contract must contain a copy of the purchase order and a letter of explanation to DFA detailing the reason for utilizing a purchase order.
6. Purchase orders are excluded from the requirement of having performance indicators and are not reviewed and approved by DFA.

**B. Medicaid Provider Agreements**

1. Medicaid Provider Agreements establish an individual or entity as a Medicaid provider and are specific to each service being provided. Contractors may have multiple contracts if they provide more than one of approximately forty available services.
2. Medicaid Provider Agreements are managed by the Division of Medical Services (DMS) and are governed by Medicaid regulations and rates.
3. Medicaid Provider Agreements are excluded from the requirement of having performance indicators.

**C. Special Nutrition Agreements**

1. These agreements are placed to provide special nutrition programs for day care centers, day care family homes, private schools, and summer school programs.
2. Specific procedures, forms, and training are available for each program.
3. These agreements are managed by the Division of Child Care and Early Childhood Education (DCCECE).

**D. Grants**

1. Grants are written agreements to provide money or property to eligible recipients under specific federal or state legislation authorizing such assistance.
2. The grant award process complies with the Accounting Procedures laws of Arkansas. A DHS program division/office utilizes a grant when it meets the definition and the tests to ensure the action does not more appropriately fit under a contracting method.
3. Grants are excluded from the requirement of having performance indicators and are not reviewed and approved by DFA. However, non-exempt discretionary grants must be reviewed by the Review Subcommittee and the

**CHAPTER TWO  
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Legislative Council prior to implementation. (see *Act 1032 of 1999 in Appendix*)

**NOTE:**

If there is doubt as to whether a grant or a professional services contract is the most appropriate agreement format, obtain a written advisory from OCC.

E. Construction Contracts

1. Construction contracts are developed and approved in accordance with State Building Services (SBS) regulations.
2. Construction contracts are not within the scope of this Manual. For details, consult OAS/CSU/Facilities Supervisor.

## CHAPTER THREE DISCLOSURE

### I. Policy

#### A. IMPORTANT TO NOTE:

1. Any **contract which exceeds \$10,000.00** shall require the contractor to disclose information as required under the terms of Executive Order 98-04, Act 34 of 1999, and regulations developed by DFA.
2. Any **amendment** to a contract that **extends the time period** or that **increases funding from \$10,000.00 or less to above \$10,000.00** requires disclosure.
3. **Subcontractors** receiving greater than \$10,000.00 are required to disclose the same information. (Note: Contracts with another government entity such as a state agency, public education institution (public school), federal government entity, or body of a local government are exempt from disclosure requirements.)
4. The **Contract and Grant Disclosure and Certification Form (Form PCS-D)** shall be used for the purpose of disclosing. (see **Contract and Grant Disclosure and Certification Form, Rules and Regulations Implementing Governor's Executive Order 98-04 and Act 34 of 1999 in Appendix**)

B. Any **contract OR grant** with a Constitutional Officer or his/her spouse shall require the contractee or grantee to disclose. Prior approval of the Joint Budget Committee during legislative sessions or the Legislative Council between sessions AND the Governor is required.

C. The failure of any person or entity to disclose as required under any term of Executive Order 98-04 or Act 34 of 1999, or the violation of any regulation or policy promulgated by DFA pursuant to the order, shall be considered a material breach of the terms of the contract and shall subject the party failing to disclose or in violation to all legal remedies available to the agency or division/office.

### II. Procedures

A. Contract developer shall inform each potential contractor who desires to enter into a contract that is not exempt from the disclosure requirements that disclosure is a condition of the contract and that the agency cannot enter into any such contract for which disclosure is not made.

B. The following language shall be included in the terms of **every contract** with any individual or entity and in every subcontract, for which the total consideration is greater than \$10,000.00, for services funded through a contract:

**“Failure to make any disclosure required by Governor’s Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this contract. Any contractor, whether individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the agency.”** Note: This language is contained in the wording of the **Professional/Consultant Services Contract form (Form OSP-1)**.

C. For each non-exempt contract that exceeds \$10,000.00, a completed **Contract and Grant Disclosure and Certification Form** shall be completed and included in the contract.

### CHAPTER THREE DISCLOSURE

1. Each contract shall also include completed **Contract and Grant Disclosure and Certification Form(s)** for any non-exempt subcontractors receiving greater than \$10,000.00 per contract. (According to DFA interpretation, Therapeutic Foster Care parents are considered as subcontractors for the purpose of disclosure.) If **Contract and Grant Disclosure and Certification Form(s)** for subcontract(s) are required but are not submitted with the contract, they **shall** be submitted to DFA within ten days of subcontract execution.
  2. Amendments that extend the time period or that increase the funding from \$10,000.00 or below to above \$10,000.00 shall also include newly completed **Contract and Grant Disclosure and Certification Form(s)** on the contractor and all affected subcontractors.
- D. During the development phase of the contract, OAS or division/office staff shall determine
1. That the **Contract and Grant Disclosure and Certification Form(s)** has/have been completed, signed, and included in the contract, AND
  2. a. That the disclosure(s) did not identify any of the individuals or entities designated in Section 4A of DFA Rules and Regulations Implementing Governor's Executive Order 98-04, OR  
b. That the conditions in Section 4C have been satisfied to exclude the contract from the prohibition of Section 4A of DFA Rules and Regulations Implementing Governor's Executive Order 98-04.
- E. **Prior approval of the Joint Budget Committee during legislative sessions (or the Legislative Council, between sessions) and the Governor is required on ALL contracts with constitutional officers or their spouses.** Such prior approval is also required on all subcontracts with constitutional officers or their spouses UNLESS the contract is competitively procured.
- F. **Prior approval of DFA/OSP is required for the awarding, renewing, or extending of contracts, leases, or purchase agreements exceeding \$10,000.00 with a state employee, board or commission member or his/her immediate family member, or any entity that shows at least 10% current ownership by any of the aforementioned individuals, UNLESS the contract, lease, or purchase agreement is competitively procured.**

Prior approval of DFA/OSP is **NOT** required for:

1. Subcontracts with any of the aforementioned individuals
2. Amendments to contracts, if the identified individuals have previously been approved by DFA/OSP.

See Appendix for sample letter requesting disclosure approval.

### III. Quarterly Report

- A. All state agencies are required to submit a quarterly report to DFA/OSP itemizing the disclosures that were identified during the calendar quarter for all transactions covered by Executive Order 98-04. Those disclosures required to be reported include:

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DISCLOSURE**

1. Grants, contracts, or leases awarded to a **Constitutional Officer or his/her spouse**, including members of the General Assembly, or to an entity in which a Constitutional Officer or spouse holds 10% ownership interest, **IF the grant, contract, or lease WERE procured competitively.**
  2. Contracts, leases, or purchase agreements awarded to **state employees, board or commission members or their immediate family members**, or to legal entities in which the individual holds 10% ownership interest, **IF the contract, lease, or purchase agreement WERE NOT procured competitively.**
- B. For PCS contracts, janitorial contracts, and equipment leases, CSS captures the data necessary for the report.
- C. For grants, voucher programs, and other purchase agreements, the administering program divisions must submit the reportable disclosure data to CSS for inclusion in the report. The division should submit the information to CSS Program Coordinator no later than the 5<sup>th</sup> working day following the last day of the quarter.
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## CHAPTER FOUR PROCUREMENT

### I. POLICY

Policy governing procurement is addressed in Chapter 10 of the Accounting Procedures Manual, Part II. (see *Appendix*) If a contract obligates a DHS division/office to pay more than \$5,000.00 in compensation, exclusive of reimbursable (this includes the proposed contract and any previous contracts and purchase orders for this division/office, for this provider) to a contractor in any one state fiscal year, procurement requirements should be met. (Note: As indicated in Chapter Two of the Contract Manual, purchase orders are excluded from procurement requirements.)

#### NOTE:

- **Open and competitive public procurement methods (“invitation for bid”, “request for proposal”, and “request for qualifications”) are highly recommended to promote cost effectiveness and fairness of opportunity among all prospective providers of service.**
- **Open, competitive procurement practices should also be applied to the greatest extent practicable in contract offers to other state agencies if there is more than one state agency which might have the capability to perform the required service(s).**
- **However, administrative considerations concerning procurement method should never be emphasized to the point where program effectiveness is jeopardized. Timely and effective services to clients should always be given paramount consideration.**

#### SPECIAL NOTE APPLICABLE TO GRANTS:

- **Specific selection procedures for grants should conform to the parameters specified in the originating legislation and implementing program directives.**
- **If any discretionary selection authority is left to the DHS granting division/office, the selection methodology should be open and competitive to the greatest extent practicable.**
- **In selection activities and documentation, the program division/office has an obligation to uphold public trust for managing public resources fairly and effectively.**

### II. PROCEDURES

- A. Once the DHS division/office staff identifies the need for contracted services, they should set an allocation (funding amount) and begin procurement procedures using one of the following eight methods:
1. Invitation for Bid (IFB)
  2. Request for Proposal (RFP)
  3. Request for Qualifications (RFQ)
  4. Sole Source
  5. State Building Services Criteria (SBS)
  6. Intergovernmental (IG)
  7. Emergency
  8. Other
- B. For PCS contracts, all elements requiring legal review should be forwarded to OCC in accordance with the “**Professional/Consultant Services Contract Deadlines**” to allow OCC sufficient time for review and response. These elements include:

## CHAPTER FOUR PROCUREMENT

1. **Procurement proposals** prior to public release (IFB, RFP, RFQ).
  2. **New performance indicators and any changes** to previously OCC-approved performance indicators. (If there are no changes to existing, OCC-approved performance indicators, the division/office can certify that fact during the development process and no submittal to OCC is required for up to seven years. At the end of seven years, OCC must re-approve the performance indicators, even if there has been no change in the performance indicators.)
  3. **Financial terms**, if they depart from DHS-standard options: fixed rate; final negotiated rate; actual cost, or scheduled reimbursement.
  4. **Terms and Conditions**, if they depart from the standard, OCC-approved **Terms and Conditions**. (*see Appendix*)
- C. PCS contracts are normally limited to a one-year term. However, up to six (6) successive one-year extension options can be exercised if such extension options are explicitly stipulated in the original competitive procurement (RFP, RFQ, or IFB) **AND** in the original contract, i.e. one year contracts can be extended in one-year extensions for a total time period no longer than seven (7) years. The extension option should only be exercised if service performance under the existing contract has been satisfactory.

**The procurement/development/approval process can be very time-intensive, especially during the high-volume "surge" period preceding the beginning of the state fiscal year. The essential elements may be required for presentation to OCC as much as five months prior to proposed contract implementation, to allow for remediation, procurement process completion, contract development, and review through DFA and the Arkansas State Legislature, if required. Program planning must anticipate a long lead-time from the initial decision-making and commitment of resources to the point of actual initiation of services under the contract.**

### D. **Procurement Methods**

The standard state contracting form for professional and consulting services (**Form OSP-1**) requires designation of the method of procurement that was used. The following options are allowable:

1. **Invitation for Bid (IFB)**
  - a. The division/office should specify in detail in the IFB the project objectives, methods, results and desired qualifications.
  - b. The division/office should consider announcing the IFB to the public in the legal notice section of a newspaper.
  - c. The division/office should seek to insure that at least three bids are received and documented. In case of failure to secure at least three bids, a written narrative explanation of circumstances should be retained in procurement files.
  - d. The division/office should award the contract to the qualified respondent submitting the lowest bid.

## CHAPTER FOUR PROCUREMENT

### 2. Request for Proposal (RFP)

- a. The division/office should include in the RFP a complete description of the problem to be resolved or the desired program results to be achieved.
- b. The division/office should submit the RFP to the public in the legal notice section of the newspaper for a minimum of two consecutive weeks.
- c. The division/office should evaluate proposals by an evaluation committee consisting of three or more members utilizing an evaluation tool previously established by the division/office.
- d. The division/office should review and evaluate all accepted proposals and award the contract to the respondent that provides the most effective solution for the price quoted.
- e. The division/office shall include with the contract a listing of criteria other than cost that were given consideration in the awarding of the contract.
- f. The division/office should also be prepared to address, in the legislative review process, their criteria for selection of contractor(s), particularly if the contract(s) was/were awarded to respondent(s) who did not provide the lowest cost proposal.

### 3. Request for Qualifications (RFQ)

- a. This procurement option is, in the absence of sole source justification, the procurement method required when contracting for architectural, engineering, land surveying and legal services.
- b. This option may also be used, to a limited extent, with prior approval from DFA/OSP, for other services when it is determined to be the most suitable method of contracting. Program agencies should consult their FOU liaison before considering this option.
- c. The RFQ method should be used ONLY when there is a set rate for the service being procured.
- d. Utilization of the RFQ method must be prior approved by DFA/OSP, except for architecture, engineer, land surveying, and legal services, as indicated above.
- e. Architect and engineer contracts for construction projects are **NOT** indicated as RFQ on the **Form OSP-1**, however, as these contracts are subject to State Building Services criteria and should, therefore, reflect "State Building Services" as the procurement option.

### 4. Sole Source

- a. **The sole source method shall be used only as a last resort, and only when the previous three methods are clearly not applicable.** Exceptions can be requested only if based on statutory requirements or profound programmatic imperatives. The division/office should expect detailed questioning in the legislative review process for all sole source proposals.

## CHAPTER FOUR PROCUREMENT

- b. Sole source PCS contracts, except for those exempt by law, those for performing artists and lecturers, and those that are documented by **sole source justification** (see below) may only be awarded after legal public notice of intent has been published in a newspaper of statewide circulation (*see Chapter 10 of the Accounting Procedures Manual, Part II in appendix*) and after OCC approval has been obtained (for contracts with non-state agencies.)
- c. Those PCS contracts that are directed by proper legal authority, i.e., court ordered or directed by statute, shall use the designation “**Sole Source – Exempt by Law.**” These are in addition to those PCS contracts that are listed in paragraph 4e of Chapter 10 of the Accounting Procedures Manual, Part II (legal, architectural, engineering, and land surveying.)
- d. In lieu of issuing legal public notice as indicated above, new sole source contracts and amendments that extend sole source contracts into another fiscal year **AND** that add funding require a written narrative justification, which must be approved in advance by DFA/OSP (except for performing artists and lecturers and for those exempt by law.) The written justification will also be provided to legislators for consideration and discussion during review by sub-committees and approval by the Legislative Council. (**EXCEPTION:** DFA/OSP prior approval is not required on contracts with state agencies.)
- e. The procedures for the division/office to request sole source procurement are as follows:
  - (1.) Division Assistant Director or Director shall prepare a memorandum to DFA/OSP in accordance with the sample **Request for Sole Source Procurement** memorandum in the Appendix, addressing the following seven questions:
    - (a) Why is this service needed?
    - (b) What method(s) were used to determine that a lack of responsible/responsive competition exists for this service?
    - (c) How was it determined that this provider possesses exclusive capabilities?
    - (d) Why is this service unique?
    - (e) Are there patent or proprietary rights that make the required service unavailable from other sources?
    - (f) What would the agency do if the provider/service were no longer available?
    - (g) In detail, what are the program considerations that make the use of a sole source contract critical to the successful completion of the agency’s task?
  - (2.) All seven questions **must** be addressed in the memorandum, even if the proper response is “not applicable”.
  - (3.) The memorandum shall be prepared as a “Word” document suitable for electronic transmission.

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- (4.) Division/office shall submit the memorandum as an attachment via e-mail to CSS administrative staff for coordination/approval.
- (5.) After coordination through OCC, CSS will coordinate approval with DFA/OSP.
- (6.) CSS will forward DFA's approval to the requesting division/office via e-mail.
- (7.) In their submittal of the applicable contract authorization to FOU, the division/office shall include the original requesting memorandum as well as a hardcopy printout of the DFA approval message.

### 5. **State Building Services Criteria**

- a. The guidelines and procedures established by the Arkansas State Building Services (SBS) shall be used in selecting architects, land surveyors, and engineers for state construction projects.
- b. Refer to **Architectural Section 6-100 of SBS Standards and Criteria – Professional Selection Procedures for State Agencies** for more detail.

### 6. **Other**

- a. This method of procurement is appropriate for certain circumstances not explicitly covered by the other seven options and is limited to **very specific uses**.
- b. Division/office should consult with their assigned CSS liaison before designating "Other" as the method of procurement. Prior approval of DFA/OSP is required for utilization of this procurement option.
- c. Requests for prior approval for "Other" procurement actions should be routed electronically to CSS Administrative staff for coordination/approval through DFA/OSP.

### 7. **Emergency**

- a. The DHS Chief Fiscal Officer or equivalent or Director, Division Director, or Deputy Director may institute a request for emergency action review of a professional or consultant service contract by providing in writing a request to the Director of State Procurement.
- b. This option is to be used **very sparingly**. See Chapter 10 of the Accounting Procedures Manual, Part II (*in appendix*) for details.

### 8. **Intergovernmental (IG)**

- a. This option applies to contracts with other Arkansas state agencies, colleges and/or universities.
- b. Program agencies should be able to justify, if the question arises, the selection of a particular agency if there is more than one state agency that might have the capability to perform the required service(s).

## CHAPTER FIVE PROVIDER EXCLUSION RULE

### I. Policy

It is the policy of DHS to conduct business only with responsible participants/contractors. Participants will be excluded from participation in DHS programs, if necessary, to protect public funds, the integrity of publicly funded programs, and public confidence in those programs (refer to DHS Administrative Policy 1088; see Arkansas Code Annotated § 19-11-245 in Appendix).

### II. DHS Exclusion List

- A. The **DHS Exclusion List** is a listing of recipients or contractors determined by DHS to be excluded from contracting with DHS.
- B. Upon determination that an entity is to be excluded, the DHS Director shall issue a written decision to exclude and state the reasons for the action taken. A copy of that decision shall be mailed or otherwise furnished to the excluded entity or designee within five days of issuance. That decision shall be final and conclusive.
- C. Exclusion shall be for a period of not less than one year.
- D. Exclusion of a participant in one program of DHS shall apply to all programs administered by DHS.
- E. The notification of DHS Director's decision shall be forwarded to OFM, which shall
  - 1. Notify DHS executive staff, payment staff, and contracting staff
  - 2. Update current reference list of excluded participants on DHS Gold

### III. List of Parties Excluded from Federal Procurement and Non-procurement Programs

- A. The **List of Parties Excluded from Federal Procurement and Non-procurement Programs** is maintained by the General Service Administration (GSA).
- B. This is a listing of firms and individuals that have been suspended, debarred or otherwise excluded by the federal government from participating in federal programs.
- C. This listing is available on the Internet, the address for which can be obtained from FOU.
- D. Search of the list is executed by name of the firm or individual in question.

### IV. All State Agencies Suspended/Debarred Vendors List

- A. The **All State Agencies Suspended/Debarred Vendors List** is a listing of entities suspended or debarred by Arkansas.
- B. This listing is maintained by DFA/OSP.
- C. This list should be checked by DHS/CSS Commodities Purchasing Unit and by the DHS facilities' Purchasing Units when purchasing commodities.

### V. Procedure When Developing Contracts/Grants

- A. Division/office should consult the DHS Exclusion List and the GSA list during the procurement process **AND** prior to the developing and awarding of any contracts or grants. CRU will consult the lists during review on new contracts only.

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PROVIDER EXCLUSION RULE**

- B. Upon receipt of notification that an entity has been added to the DHS Exclusion List, CSS shall initiate action to terminate all existing contracts or grants with that entity.

## CHAPTER SIX PROVIDER AUDIT REQUIREMENT

### I. Policy

DHS Audit Guidelines and OCC Audit Section determine provider audit requirements and the resolution of provider audit findings.

### II. Procedures

- A. Upon receipt of an independent audit report, OCC Audit reviews the report for any findings and recommendations.
- B. If there are findings and recommendations, OCC Audit ensures that there is a Corrective Action Plan (CAP) and, if necessary, comments on the CAP.
- C. OCC Audit forwards the findings and recommendations, the CAP, and any comments to the program division/office and to the FOU Manager. The FOU Manager distributes copies of the findings and recommendations to appropriate FOU staff to use in their site visits.
- D. Upon receipt of the above information from OCC Audit, the program division/office determines the course of action to be taken.
  1. If the program division/office determines that recoupment from the provider or additional payment to the provider is indicated the following action is taken.
    - a. If the provider's contract is no longer in effect, the program division/office forwards its determination to OFM/Accounts Receivable (AR) for recoupment or to OFM/Accounts Payable (AP) for payment, with copies forwarded to CSS and OCC Audit.
    - b. If the provider's contract is still in effect, the program division/office forwards its determination to CSS for payment adjustment, with copies forwarded to OCC Audit.
  2. If the program division/office determines that no recoupment or additional payment is required, the division/office forwards that information to CSS with a copy to OCC Audit.
- E. For **every** contractor or grantee, the contract/grant developer should submit to OCC Audit a **Provider Audit Sign-Off Sheet (PASOS)** form requesting verification of the contractor's/grantee's status regarding the audit requirement. (*see Appendix for form*) OCC Audit will complete and return the **PASOS** to the requestor.
- F. The contract/grant developer should review the returned **PASOS** from OCC Audit to determine contractor's/grantee's status.
  1. If status is "current", contract/grant developer should include the **PASOS** response in the correspondence section of the contract/grant. The **PASOS** response is not made a legal attachment.
  2. If status is "not current", contract/grant developer should contact contractor/grantee to determine if audit has been submitted, to determine when it will be submitted, or to otherwise resolve the delinquency. When the contract/grant developer determines the audit has been submitted to OCC Audit, he/she should submit another **PASOS** to OCC Audit.

## CHAPTER SEVEN PERFORMANCE BASED CONTRACTING

### I. Policy

Refer to DHS Policy 1066 "Performance Based Contracting Policy". See Act 1255 of 1993 and Arkansas Code Annotated § 19-4-1716 in Appendix.

These policies are applicable to every contract or contract extension to which DHS is a party except as listed below

- A. Contracts with the United States government or an agency thereof
- B. Cooperation agreements entered pursuant to the Interlocal Cooperation Act, Arkansas Code Ann. § 25-20-101 et seq.
- C. Contracts mandated by an order or judgement of a state or federal court if application of these rules would result in violation of the terms of the court's order or judgement. For example, a juvenile judge may order DHS to arrange for a juvenile to receive immediate psychological treatment, thereby preventing compliance with this policy before treatment begins
- D. Contracts solely to rent, lease, or purchase goods or equipment
- E. Contracts for **\$10,000.00** or less
- F. Contracts for rent or lease of buildings or real property
- G. Contracts for architectural or engineering services
- H. Purchase orders
- I. Grants

**Note:** Although the scope of these rules may not extend to all contracts, every DHS division/office is encouraged to utilize performance evaluations for their contracts unless the DHS division/office Director determines performance evaluation would not be cost effective.

### II. Procedures

- A. The division/office should prepare proposed performance-based standards for each contract over \$10,000.00 except for exclusions listed previously. (*see Appendix for suggested format*)
- B. The division/office preparing performance based standards should submit the proposed standards to OCC for review and approval. These can be submitted with the IFB, RFP, or RFQ.
- C. OCC will review the proposed performance based standards to determine if they violate any law or regulation applicable to DHS and that the contract terms will be enforceable. OCC will indicate their approval in writing or by electronic mail.
- D. The performance indicators included in the contract are required to specify the following
  - 1. Goals
  - 2. Performance Indicators
  - 3. Acceptable performance levels
  - 4. Remedies for unacceptable performance

**CHAPTER SEVEN  
PERFORMANCE BASED CONTRACTING**

- E. There is no need for legal review by OCC if the contracting division certifies on the **Performance Based Contracting Certification** that
1. The contract is identical to an existing contract that has received OCC approval except as to contractor
  - and**
  2. The existing approved performance terms are satisfactory and have accomplished the outcomes desired. (*see Appendix for sample division/office certification*)

The division can certify on performance indicators for a period not to exceed seven years. At the end of seven years, OCC must re-approve, even if there has been no change in the performance indicators.

**III. Performance Evaluation**

- A. During the term of the contract, the division/office shall complete sufficient performance evaluation(s) to determine if the contractor's performance is satisfactory or unsatisfactory. Justification for the division/office's ultimate determination should be retained in the division/office files for a minimum of five years.
- B. As part of the end-of-year closeout procedures, the division/office shall
1. Review the performance of ALL contracts having performance indicators
  2. Notify the contractor(s) of the results of the performance evaluation and impose remedies for inadequate performance
  3. Report to CSS **any that have performed at an UNSATISFACTORY level** along with a short synopsis of the problem and the ultimate remedy that was applied
  4. Report to CSS that the performance of all remaining contracts was considered **SATISFACTORY**.
- C. Per Act 1255 of 1993, DHS must provide a summary report to the legislative Joint Committee on Public Health, Welfare, and Labor listing the overall assessment of performance of each contract at the end of each state fiscal year.

**IV. Contract Amendments**

- A. When amendments are executed on a contract with performance indicators, except in certain circumstances listed below, the key elements of the amendment should be furnished to OCC for review. OCC will review the information to insure there is no material change in the terms that could render any portion of the contract unenforceable. These key elements include
1. Terms and Conditions
  2. Performance Indicators
  3. Procurement method, with justification
  4. Proposed financial terms
- B. The above review by OCC for amendments is **not** required if the contracting division/office certifies on the **Performance Based Contracting Certification** that

**CHAPTER SEVEN**  
**PERFORMANCE BASED CONTRACTING**

1. The amendment changes only quantity, price, or duration, **and**
2. The existing approved performance terms have previously been approved by OCC, are satisfactory, and have accomplished the outcomes desired. (see *Appendix for sample division/office certification*).

The division can certify on performance indicators for a period not to exceed seven years. At the end of seven years, OCC must re-approve, even if there has been no change in the performance indicators.

**Note, in addition:**

1. OCC approval is **not** required for previously OCC-approved performance indicators being utilized in a new contract. Division/office certification **IS** required, however.
  2. Neither OCC approval nor division/office certification is required for amendments that **terminate** a contract.
  3. OCC approval and division/office certification may be submitted by electronic mail.
- C. Any changes to performance indicators require approval by OCC.
- D. If an amendment changes some but not all of the performance indicators in a contract, OCC approval should be obtained for those that are changing and the division/office should certify for those that are not changing.

## CHAPTER EIGHT MATCHING FUNDS

### I. Policy

- A. Matching requirements are based on federal or state legislation or DHS policy decisions. If required by the terms of the contract or grant, the contractor/grantee may certify that specific amounts of money, property or services are available to match funds for the purchase of services. *(See Financial Guidelines for Purchased Services, Section 3500, for more information)*
- B. Certain funding sources (e.g., SSBG) have specific requirements regarding the source(s) of match that are available for utilization. *(See Social Services Block Grant Program Manual, Section 5100)*

### II. Procedures

- A. For all agreements that require matching funds, the terms (including associated percentages of state, local, or certified levels of participation) should be specified in the contract. **(NOTE: A section for the required match information is included in the standard, OCC-approved Terms and Conditions.)**
- B. When specific limits are exceeded or match rate changes, an amendment to the contract should be executed.

## CHAPTER NINE RATE INCREASE APPROVAL

### I. Policy

Ark. Codes Annotated § 20-75-110 and § 20-77-110 govern rate increases to DHS contractors in certain circumstances. (see *Appendix*)

### II. Requirements

- A. In many situations, it is prohibited to increase the contractor's reimbursement rate without first obtaining the approval of the Governor of Arkansas and the Chief Fiscal Officer, DFA.
- B. New contracts procured through a competitive process (i.e., IFB, RFP, or RFQ) are not subject to this requirement.
- C. Some fixed rates that function as ceiling rates can allow for increases in payments that do not constitute a rate increase above the ceiling rate.
- D. Administrative contracts or other professional service contracts entered into by the Medicaid program with individuals or corporations not as providers of medical service do not come within the scope of this regulation. These contracts already have a review process established which includes DFA and the legislature.
- E. When a Medicaid rate increase is approved for a service that is in a contract, DHS can pay the increased rate without having to request a rate increase through the Governor **IF** the contract contains language that allows DHS to use the current Medicaid rate. Sample wording to add to contracts to allow this capability is as follows:
  - “ (Listing of services) are Medicaid reimbursable services. Due to the rates/unit/service definitions for Medicaid reimbursable services being subject to change, (division/office) will use the current Medicaid rates for any Medicaid reimbursable service. The (division/office) rates will be changed after official notice is received from the Division of Medical Services.”
- F. In those cases where the Governor's approval is required, the implementation of rate increase will not be approved prior to the date of his signature on the **Reimbursement Rate Increase Approval Form (DHS-1951)**.

### III. Procedures

- A. To request an increase in the reimbursement rate(s) of service(s), the program division/office should complete **DHS-1951** and submit it to CSS along with justification and supporting documentation. The **DHS-1951** requires an original signature by the division/office Director. One form should be completed for each contractor.
- B. Upon receipt of the request, CSS will log the request, check it for completeness, and forward it to CSS Assistant Director for review.
- C. Upon review, CSS Assistant Director will forward the request to DMS for a review of the impact the requested rate increase would have on the Medicaid budget. If there is no negative impact, DMS so indicates and returns the request to CSS.
- D. CSS prepares a letter to DFA and attaches it to the request, both of which are forwarded through OFM Chief Fiscal Officer to DHS Director.
- E. Upon his approval, DHS Director routes the request and the letter to the Governor's Office for approval. If he does not approve, DHS Director returns the request to CSS.

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RATE INCREASE APPROVAL**

- F. Upon his approval, the Governor returns the signed request to CSS. CSS notifies the requesting division/office of approval and notifies FOU for those contracts developed by FOU. If the request is not approved by the Governor, CSS notifies the requesting division/office of this fact as well.
  
- G. CRU maintains file copies of all rate increase requests.

**NOTE:**

For rate increase requests that relate solely to Medicaid and that are strictly under the auspices of DMS, the request originates within DMS for coordination through the Office of Fiscal Management and the DHS Director's Office to DFA Office of Budget and on to the Governor. These requests do NOT need to flow through CSS.

All other rate increase requests SHOULD flow through CSS as outlined above.

**CHAPTER TEN  
PROFESSIONAL/CONSULTANT SERVICES CONTRACTS**

**I. Policy**

See Chapter 10 of the Accounting Procedures Manual, Part II (*see Appendix*)

**II. Contracting Requirements**

**A. Timeframes**

1. All contract proposals should be negotiated, developed, and submitted in sufficient time to allow for a thorough compliance review by CRU. This review is required prior to the routing of the proposal to DFA.
2. For specific deadlines for the submission of authorizations to FOU, completed contracts to CRU, and signed contracts to DFA, refer to the **Professional/Consultant Services Contract Deadlines** that is published and distributed by CSS. Cooperation in meeting the published deadlines will avoid possible delays in service and Suspension of the Rules.

**B. General requirements for all PCS contracts include, but are not limited to, the following:**

1. Per Chapter 10 of the Accounting Procedures Manual, Part II, contracts **with non-state agencies** that exceed \$10,000.00 in compensation, exclusive of reimbursable expenses, for regular full-time or part-time weekly work, must be presented to the **Legislative Council (Review Committee) or the Joint Budget Committee** prior to approval of DFA and prior to the execution date of such contract. Contracts **between state agencies** that exceed \$10,000.00 in compensation, exclusive of reimbursable expenses, for regular full-time or part-time weekly work, must be presented to the **Performance Evaluation and Expenditure Review (PEER) Committee or Joint Budget Committee** prior to approval by DFA and prior to the execution date of such contract. The Review Committee or the Joint Budget Committee, however, may elect to review or exempt any contract or group of contracts.

**In current practice, as of the date of this Manual revision, the Review Committee and PEER have EXEMPTED FROM THEIR REVIEW ALL CONTRACTS WITH A TOTAL (“COMPENSATION” PLUS “REIMBURSEMENT”) VALUE OF \$25,000.00 AND BELOW.** This includes all previous purchase orders with this contractor, for this division/office, for this service, within the fiscal year.

2. Contracts exempt from review by Review or PEER Committee must be received at DFA at least five working days prior to the effective date of the contract (or at least ten days prior, for sole source contracts). DFA submits to the legislature a monthly listing of all approved contracts not requiring legislative review.

Contracts requiring review by Review or PEER Committee must be received at DFA at least 45 days prior to the effective date of the contract (or at least 50 days prior, for sole source contracts).

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3. Contracts requiring legislative review that are submitted to DFA after the due date must be accompanied by a **Suspension of the Rules** letter from the DHS Director. This letter should contain the following (*see sample format in Appendix*)
  - a. Contractor's name
  - b. Request for suspension of the rules
  - c. Explanation for failure to submit the contract under regular procedures
  - d. Description of the service(s) being purchased
  - e. Consequences if the request is not granted
4. Approval of Chief Fiscal Officer, DFA, is required for a two-year contract that covers both years of the biennium. In no event, however, shall a contract extend past the current biennium unless the General Assembly, prior to the expiration of the current biennium, makes an appropriation for such purpose.
5. Contracts with individuals and sole proprietorships are **prohibited** unless approved by OCC and are, in any case, strongly discouraged. (A sole proprietor is one who owns all of the assets of the business and is solely liable for all the debts of the business.)
6. In many situations, it is prohibited to increase the contractor's reimbursement rate without first obtaining the approval of the Governor of Arkansas and the Chief Fiscal Officer, DFA. (*see Act 1239 of 1993, Section 73, and Arkansas Codes Annotated § 20-77-110 and § 20-76-212 in Appendix*) **Note:** New contracts procured through a competitive process are not subject to this requirement. Also, some fixed rates that function as ceiling rates for services can allow for increases in payments that do not constitute a rate increase above the ceiling rate.
7. Certain PCS contracts require additional approval beyond the normal procedure.
  - a. Construction-related contracts require review by and approval from the DHS Central Support Unit (CSU) and Arkansas SBS.
  - b. Purchase of computer equipment in excess of \$750.00 through a PCS contract requires review by and approval memo from the DHS Office of Systems and Technology prior to the development of the contract (see Chapters 607 and 608 of DHS Administrative Procedures Manual for details.) Re-approval is required for all amendments to applicable contracts.
  - c. Contracts for legal services require review by and approval from OCC.
8. PCS contracts are not binding, and no payments will be made, until they are approved and signed by both contracting parties (the service provider and the applicable program division or office director), as well as by a representative of DFA.
9. Funding amounts based on Final Negotiated or Fixed unit rates should be computable to an even number of units whenever practical. Funding amounts based on budgets should be exact, not rounded. Contract totals that include more than one funding source should reflect the exact total of the funding sources, not a rounded amount.
10. The prior written approval of OCC is required for the contractor to assign the contract in whole or in part or any payment arising therefrom.

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11. A stamped or automated signature by a contracting party is considered valid and binding unless there is evidence that it was **not** entered with present intention to authenticate a writing.

C. Reimbursement Guidelines

The contractor and division/office should agree upon the method of reimbursement before a contract is developed. The following methods are acceptable for public or private contractors.

1. Fixed Rates

- a. Fixed rates are based on a rate schedule approved by DHS and standardized for a particular service or group of services. Rate schedules are developed by the program division/office funding the program. The division/office should adhere to the DHS criteria for a cost study. (*See Financial Guidelines for Purchased Services for criteria*)
- b. The contractor rates should fall within the range of allowable rates shown on the approved rate schedule. Amendments to revise rates amended within this range are completed on a prospective basis from the effective date of the contract amendment. Fixed rates based on federal approved rates such as Medicaid may be effective on the date of approval by the federal agency.
- c. All payments are final and no settlement will be made upon expiration of the contract.

2. Final Negotiated Rates

There are a variety of approved methods to determine an estimate of reasonable and necessary expenditures per unit of service being purchased. These include, but are not limited to, the following

- a. A total operational budget allocated to service component
- b. The published rates of the contractor for non-contract clients
- c. The established community rate for a similar service
- d. The previous year's audit
- e. The contractor's cost study

3. Actual Cost

- a. Actual cost reimbursement is based on a complete itemized listing of allowable program expenses.
- b. The total itemized listing should equal the total DHS funding in the contract.

4. Scheduled Reimbursement

- a. Scheduled reimbursement is based on a schedule of costs or line-item budget submitted by the contractor. The cost schedule is derived from recurrent preset expenses.

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- b. Through the cost schedule, the contractor assures that certain expenses will be incurred during specific periods of time.
- c. Reimbursement is based on the cost schedule or budget and payment corresponds to the actual incurred expenses for each specified period.

D. Payment Limitations

The division/office may impose payment limitations on certain funding sources in order to be able to maintain payment capabilities to all providers and/or to levelize payments to contractors throughout the contract period. Payment cuts to contractors necessitated by payment limitations are restored in subsequent payments within the contract period. Common payment limitations include Monthly Cumulative and Quarterly Cumulative.

1. Monthly Cumulative

Payment to the provider is limited to 1/11 or 1/12 (to be determined by the division/office) of the maximum annual contract liability for each month of the contract on a cumulative basis (e.g., at the end of the first month of a 12 month contract, the payment limitation is 1/12 of the contract liability; at the end of the second month the payment limitation for the two month period is 2/12 of the maximum liability, etc.)

2. Quarterly Cumulative

Payment to the provider is limited to one quarter of the maximum contract liability for each quarter of the contract on a cumulative basis (e.g., at the end of the first quarter, the payment limitation is 25% of the contract liability, at the end of the second quarter the payment limitation for the six month period is 50% of the maximum liability, etc.)

E. Subcontracts

Contractors shall insure non-discrimination and equal opportunity by subcontractors in compliance with all applicable federal laws, regulations, executive orders and civil rights rules and regulations.

**III. Development of PCS Contracts**

- A. FOU develops all PCS contracts upon receipt of individual authorizations from the DHS program divisions/offices requesting such contracts. On a case by case basis and upon consultation with CSS, program divisions/offices may conduct their own development of certain PCS contracts. **(Social Services Block Grant Program Manual Policy 2110 requires that FOU develop ALL contracts with SSBG funding.)**

Required elements for a contract authorization for FOU to develop a PCS contract include:

- 1. Completed **Contract Authorization/Input Form (DHS-9190)**
- 2. PCS contract document (**Form OSP-1**), page 7
- 3. OCC-approved performance indicators
- 4. Any other legal attachments, including required financial information

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5. Any additional information necessary concerning billing, forms the provider is required to use, procurement documentation, etc.

**NOTE: Electronic format is preferred for submission of all documents to FOU.**

- B. Upon receipt of the authorization, the FOU Supervisor should
  1. Enter the authorization on the CRU/FOU Log.
  2. Complete the **CSS Routing Slip** (*see appendix*).
  3. Review the authorization and make or coordinate any needed corrections.
  4. Forward the authorization to Contract Officer (C.O.) along with a memo assigning a submittal Target Date by which the completed contract is to be submitted to the division/office. **If the C.O. cannot meet the Target Date, he/she should request an extension prior to the Target Date.**
- C. The C.O. should enter the receipt date on the CRU/FOU log. He/she should meet with the contractor agency representative, deliver the necessary contract forms, and explain the contracting requirements. See **Checklist for Review of Contract with Contractor** in Appendix for tool to use to ensure all pertinent elements are pursued with the contractor.
- D. Upon the contractor's review and signature, the C.O. should review the proposal. C.O. may use the **Professional/Consultant Services Contract Checklist** as a tool in reviewing the contract for completeness. (*see Appendix*) C.O. should clarify any questions, make any corrections necessary (with the contractor's approval), package the contract, and submit it to the program division/office for review and signature by the division/office Director. Upon the division/office Director's signature, the program division/office should submit the contract to CRU for review.
- E. **The complete contract shall include the following items:**
  1. **Professional/Consultant Services Contract (Form OSP-1)** (*see Appendix*)

**NOTE:** The contract name should be the complete, legal name of the contractor as opposed to the "doing business as" name. For incorporated entities, the legal name is found on the contractor's incorporation papers and on the Arkansas Secretary of State website (for Arkansas incorporated entities). The contract address should be the address of the legal headquarters, as opposed to the "remit to" address.
  2. **All attachments referenced on Form OSP-1**
    - a. All attachments should be numbered in sequential and consistent form.
    - b. The label on each page of each attachment should include:
      - (1.) Contractor name
      - (2.) Vendor number
      - (3.) Attachment number
      - (4.) Effective date
      - (5.) Page number
  3. **Contract and Grant Disclosure and Certification (Form PCS-D) (for applicable contracts over \$10,000.00)** (*see Appendix and Chapter Three of Contract Manual*)

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- a. All disclosures requiring pre-approval by DFA should be resolved prior to administrative certification of the contract by DHS.
- b. The **Contract and Grant Disclosure and Certification** shall not be made a legal attachment.

**F. Other necessary elements for the complete contract package include:**

1. **Contract Authorization/Input Form (DHS-9190)** *(see Appendix)*.

**NOTE:** PCS contracts developed by DHS program divisions/offices should include a **Data Input Form (DHS-9191)** instead of the **Contract Authorization/Input Form (DHS-9190)** for all contracts that are **NEITHER** paid by EDS **NOR** are Direct Pay.

2. **Performance Indicators** (For applicable contracts over \$10,000.00) *(see Appendix and Chapter Seven of the Contract Manual)*

- a. Performance indicators require approval of OCC or a **Performance Based Contracting Certification** by the program division/office, according to DHS Policy 1066. This approval/certification can be in the form of electronic mail submission from the individual authorized to approve/certify.
- b. If the approval/certification is in electronic format, a hard copy of the e-mail submitting it should be attached to the approval/certification.
- c. If division/office certifies for performance indicators previously approved by OCC (prior to the development of this contract), a copy of OCC's approval shall also be attached.
- d. Performance indicators and OCC's approval shall be made a legal attachment. Division/office certification should be included in correspondence.

3. **Terms and Conditions**

- a. This document contains the legal and financial terms of the contract.
- b. The **Terms and Conditions** should be in the format provided in the Appendix to this Manual. Referral to and/or consultation with OCC is required if an alternate **Terms and Conditions** is to be utilized.
- c. This document should have an original signature by the contractor.
- d. This document shall be made a legal attachment.

4. **Budget/Rate Information**

- a. For contracts reimbursed on an **Actual Cost** basis
  - (1.) An itemized listing of allowable program expenses and justification are required elements. The total itemized listing should equal the total DHS funding in the contract.
  - (2.) Each line-item expense should be identified as either compensation or reimbursable expense, and the total compensation and total reimbursable expense should be indicated on the itemized listing.

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- (3.) If the contract identifies purchased services to DHS clients, (i.e. indicates or refers to service(s) by service name and service code on the **DHS-9190** or **DHS-9191**) the itemized listing should include
    - (a) service name(s)
    - (b) service code(s)
    - (c) service unit definition(s)
  - (4.) The itemized listing shall be indicated on the **Form OSP-1** or made a legal attachment.
- b. For contracts reimbursed on a **Fixed or Final Negotiated Rate** basis
- (1.) The contracted fee/rate schedule is a required element.
  - (2.) If the contract identifies purchased services to DHS clients, (i.e. indicates or refers to service(s) by service name and service code on the **DHS-9190** or **DHS-9191**) the itemized listing should include:
    - (a) service name(s)
    - (b) service code(s)
    - (c) service unit definition(s)
    - (d) unit rate(s)
  - (3.) The schedule should indicate the number of units per service to be purchased, if applicable.
  - (4.) For **budget-based Final Negotiated rates**, the rate schedule should include a notation that it is based on a budget that is on file with the program division/office.
  - (5.) For **non-budget-based Final Negotiated rates**, the method of determining the rate should be noted in the rate schedule.
  - (6.) The fee/rate schedule shall be indicated on the **Form OSP-1** or made a legal attachment.
- Note:** If the division/office has a specific request and justification for including program-specific budgets and/or a full-disclosure budget as a part of the contract, they may be added as legal attachments. FOU and CRU will review the program-specific budgets, but not the full-disclosure budgets.
- c. For contracts reimbursed on a **Scheduled Reimbursement** basis
- (1.) An itemized listing of allowable program expenses and justification are required elements. The total itemized listing should equal the total DHS funding in the contract.
  - (2.) Each line item should be identified as either compensation or reimbursable expense, and the total compensation and total reimbursable expense should be indicated on the itemized listing.
  - (3.) A payment schedule should include the amount and dates of payments to be made during the contract period. The first payment should be no earlier than three weeks after the effective date of the contract.
  - (4.) The schedule of payments should include expenditure reporting requirements and payment adjustment conditions.

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- (5.) The itemized listing and schedule of payments shall be indicated on the **Form OSP-1** or made a legal attachment.
5. **Provider Audit Sign-Off Sheet (PASOS)** (*see Appendix and Chapter Six of Contract Manual*)
- a. Every contract should include a **PASOS** that has been approved by OCC, Audit Section.
  - b. This approval should indicate that the provider's audit status is "current".
  - c. The **PASOS** shall not be made a legal attachment.
- G. Other elements may be required to complete the contract. They include, but are not limited to:
1. **Sole Source Justification**
    - a. Sole Source PCS contracts, except for those exempt by law, those for performing artists and lecturers, and those that are published in a newspaper of statewide circulation, require sole source justification and DFA approval.
    - b. For "Sole Source by law", cite the mandating legislation on page 7 of the **Form OSP-1** or reference the court order on page 7 and attach a copy.
    - c. For Sole Source by Intent to Award, include a copy of the advertisement and indicate the dates the advertisement ran.
    - d. The justification/approval and advertisement shall not be made a legal attachment.
  2. **List of Criteria for RFP Selection**
    - a. If the RFP method of procurement is utilized, division/office shall provide a listing of the criteria other than cost that were given consideration in the awarding of the contract.
    - b. This listing shall not be made a legal attachment.
  3. **Prior Approval for RFQ Selection**
    - a. The RFQ method of selection, except for architects, engineers, land surveying, and legal services, requires prior approval from DFA.
    - b. This prior approval shall not be made a legal attachment.
  4. **Certification Regarding Lobbying** (*see Appendix*)
    - a. Certification is required for all contractors that receive in excess of \$100,000.00 in federal funds **per Federal fund source per fiscal year**. This pertains to **all** federal funds received by the contractor, not just the federal funds in this contract.
    - b. Certification should be indicated on **Form DHS-9350, Certification Regarding Lobbying**, unless provided elsewhere in the contract, i.e., within the **Terms and Conditions**. (*see Appendix*)
    - c. Certification requires an original signature and date by the contractor.
    - d. Certification shall be made a legal attachment to the contract.

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5. **Funding Availability**
  - a. A **Funding Availability** statement should be added to any contract that has funding within the contract with effective dates (beginning and/or ending dates) that differ from that of the overall contract.
  - b. This statement may be in the format found in the Appendix or may be of any similar format that clearly states the necessary information.
  - c. The **Funding Availability** statement shall be made a legal attachment to the contract.
  
6. **Matching Terms** (*see Appendix*)
  - a. Specification of matching terms is required when funds included in the contract have a required match from state and/or local funds. (If the standard, OCC-approved **Terms and Conditions** are utilized, no additional documentation regarding matching arrangements is required.)
  - b. This specification shall be made a legal attachment.
  
7. **DHS Option to Amend Contract to Extend for Successive Years**
  - a. All amendments to extend existing contracts into successive years are required to have the language allowing such continuation clearly stated in the original contract.
  - b. The standard, OCC-approved **Terms and Conditions** contain the proper language to allow for this option. If non-standard Terms and Conditions are used, consult with division liaison to ensure this required language is added.
  - c. This language shall be included as a legal attachment.
  
8. **Reimbursement Rate Increase Approval Form (DHS-1951)** (*see Appendix and Chapter Nine of Contract Manual*)
  - a. Rate increase approvals are not effective until the date of signature by the Governor of Arkansas on the **DHS-1951**.
  - b. An approved **DHS-1951** is required for rate increases for services. Note exceptions in Chapter Nine.
  - c. The **DHS-1951** shall not be made a legal attachment.
  
9. **Independent Contractor Checklist (DHS-9356)** (*see Appendix*)
  - a. This form should be completed by program division/office if contractor is an individual or sole proprietor contracting to provide services.
  - b. This form is used to assess the status of the individual or sole proprietor as an independent contractor rather than a DHS employee.
  - c. The **DHS-9356** shall not be made a legal attachment.
  
10. **Waivers of Policy**
  - a. Requests for waiver of any DHS promulgated policy should be submitted by the requesting division/office Director or designee to the DHS/OAS/Chief Administrative Officer or designee for approval.
  - b. Waiver approvals shall not be made legal attachments.

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11. **Certificate of Authority from the Secretary of State**
  - a. The **Certificate of Authority** is a required document for contracts with out-of-state corporations transacting business in Arkansas. (see "*Foreign Corporations Transacting Business in Arkansas*" in Appendix)
  - b. If the out-of-state contractor does not provide services **in Arkansas** or is otherwise exempt (see "*Foreign Corporations Transacting Business in Arkansas*" in Appendix), a Certificate of Authority is not necessary.
  - c. This certificate shall not be made a legal attachment.
  
12. **Suspension of the Rules Letter** (see *sample letter in Appendix*)
  - a. This letter is required for all contracts requiring legislative review that are submitted to DFA after the due date.
  - b. This letter shall not be made a legal attachment.
  
13. **Arkansas State Building Services Contract Justification Form** (see *Appendix*)
  - a. The **Arkansas State Building Services Contract Justification** form is required for contracts for Architectural or Engineering services.
  - b. This form shall not be made a legal attachment.

**IV. Submittal of Contract**

- A. Completed contract should be secured in a manila folder with metal fasteners at the top right and top left sides. Contract folder should be labeled with the contractor's name. A transmittal memo to CRU and the **CSS Routing Slip** should be attached to the front of the folder. C.O. should enter the submittal date of the PCS contract on the CRU/FOU log.
  
- B. Contract order, top to bottom, is as follows
  1. Right side of folder
    - a. **DHS-9190**
    - b. **Form OSP-1**
    - c. Disclosure Form(s)
    - d. Legal attachments
    - e. Any purchase orders for this provider, for this division, during the fiscal year for which the contract is or will be effective, if applicable
    - f. Justification for initial contract exceeding one calendar year, if applicable
    - g. Procurement documentation
    - h. **Suspension of the Rules** letter, if applicable
  
  2. Left side of folder
    - a. **DHS-9191**
    - b. Correspondence
    - c. Certifications (ex, **Performance Based Contracting Certification**)

**V. Contract Compliance Review**

- A. Upon receipt of the contract, CRU should date stamp the contract, assign the contract a record number, and enter the contract on the CRU/FOU log. Each contract should be systematically logged in and out of CRU as the contract is routed.
  
- B. CRU should perform a complete fiscal and compliance review of the contract in accordance with DFA and DHS contracting policies and procedures, and state and federal laws and regulations, including a review of the Provider Exclusion List.

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- C. CRU should identify any discrepancies or compliance issues and complete the tracking, checklist and review comments sheet.
- D. CRU should contact C.O. to perform telephone resolution as needed. CRU Contract Reviewer should initial and date any changes/corrections he/she makes to the contract or supporting documents.
- E. CRU should forward any remaining resolution items to the CSS Resolution Unit.
- F. If there are no remaining discrepancies requiring resolution by the CSS Resolution Unit, CRU should arrange the contract in proper contract order and forward it to CSS Assistant Director for review and signature.

**VI. Contract Resolution**

- A. Resolution of discrepancies is monitored by CSS Resolution Unit, comprised of FOU Supervisors, CSU Manager, and CSS Program Manager.
- B. FOU Supervisors should insure resolution for contracts developed by their assigned C.O.'s.
- C. CSU Manager should insure resolution for SBS contracts.
- D. CSS Program Manager should insure resolution for all other contracts.
- E. CSS Resolution Unit should insure all discrepancy issues are adequately addressed in the contract and make any needed final corrections (assuring that proper consultation with and/or notification of the contractor and the division/office has been executed). CSS Resolution Unit should initial and date any changes/corrections he/she makes to the contract or supporting documents, arrange contract in proper contract order, and forward contract to CSS Assistant Director for review and administrative certification.

**VII. Administrative Certification**

- A. Upon completion of review by CRU, and resolution by CSS Resolution Unit, if necessary, CSS Assistant Director will sign the **CSS Routing Slip** as administrative certification that the contract is ready for review by DFA and state legislature.
- B. CSS Assistant Director will route the contract to CRU for processing and forwarding to DFA.

**VIII. Contract Submittal to DFA**

- A. Upon receipt of the contract from CSS Assistant Director, CRU shall forward the original contract and two copies to DFA for legislative review, if necessary, and for DFA approval.
- B. If the contract is for construction services, CRU shall forward the original proposal and three copies to the Arkansas SBS for review and approval prior to submittal to DFA by SBS.
- C. CRU should retain a copy of the contract, along with all correspondence and supporting documentation, for the CRU temporary file.

**IX. Contract Distribution**

- A. Upon approval of the contract by DFA, CRU will receive the original approved contract from DFA and make the necessary copies.

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- B. CRU should forward contract documents as follows:
1. To the contractor
    - a. Provider transmittal sheet
    - b. Complete **Form OSP-1**
    - c. **Form PCS-D**
    - d. All attachments referenced on the **Form OSP-1** or **Form OSP-1A**
  2. To the DHS program agency (division/office)
    - a. Agency transmittal sheet
    - b. **DHS-9190 or DHS-9191**
    - c. **Form OSP-1** signature page
    - d. Any pages of the **Form OSP-1** and referenced attachments that reflect changes or corrections made in resolution. (Minor changes to page numbers and effective dates on attachments are not considered "changes" in this respect.)

**NOTE:** To ensure having a complete contract, it is incumbent upon the division/office to make for themselves a copy of the contract subsequent to the division/office Director's signature and before submittal to CRU.
  3. To FOU
    - a. **DHS-9190**
    - b. Any pages of the **Form OSP-1** and referenced attachments that reflect changes or corrections that were made in resolution.
  4. To CMU
    - a. **DHS-9190 or DHS-9191**
    - b. Budget/rate information on **Form OSP-1** and/or budget/rate schedule

**NOTE:** CMU will not receive any copies of contracts that are paid by EDS.
  5. To CSU, for SBS contracts
    - a. Complete copy of **Form OSP-1**
    - b. SBS Contract Justification Form
    - c. **Form PCS-D**
    - d. Attachments referenced on **Form OSP-1**
- C. The original contract should be maintained on file with CRU in the Record Room. All requests for contract information from the CRU Record Room should reference the contract number.
- D. Upon receipt of the DFA approved contract, FOU Manager should forward a copy of the contract to the C.O.
- E. Upon receipt of the DFA approved contract and the **DHS-9190 or DHS-9191**, CMU should
1. Enter the contract data into the DHS contract/grant payment system and initial the **DHS-9190 or DHS-9191** where indicated
  2. Forward a copy of the initialed **DHS-9190 or DHS-9191** to the contract developer and the CRU Records Room
  3. For those contracts developed by FOU, forward a copy of the **DHS-9190** to C.O.'s Supervisor

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**X. Contract Amendments**

**A. Timeframes**

Contract amendments should adhere to the same timeframes outlined for the development of new contracts.

**B. General Amendment Requirements**

1. Amendments to contracts are required when any element on the **Form OSP-1** form or any of the legal attachments is revised to the extent that it materially affects the contractor or DHS in any way. Amendments shall be mutually agreed upon by the contracting parties.

Amendments that change the total dollar amount of a contract, the term of that contract (service period), or any substantive specifications (significant scope and objectives) to a contract must be submitted for DFA approval.

**Note the following:**

- a. Minor revisions or administrative corrections that affect only the internal administration of a contract do not require an amendment; these may be accomplished as “change” actions (*see Section XIV, Changes*).
- b. Changing a contractor’s Taxpayer Identification Number (TIN) cannot be accomplished as a “change” or an amendment. To change a contractor’s TIN, the contract with the former TIN must be closed and a **new contract** with the new TIN must be created.

**NOTE:** This assumes that the new contractor is still virtually the same as the former in every respect except for the TIN and that an individual authorized by the contractor signs an affidavit attesting to the following:

- (1) There has been no material change in ownership and the new contractor, although its corporate name may be different, is the same as the former contractor except for the TIN, AND
- (2) The new contractor will abide by all terms stated in the underlying procurement document(s) and any response(s) made by the original contractor to the RFP, RFQ, or IFB.

The new contractor shall complete a **Contract and Grant Disclosure and Certification form**.

If the new contractor is NOT virtually the same as the former contractor and/or the new contractor does not sign the affidavit, the program agency must re-procure.

- c. Contracts that have expired cannot be amended.
2. Amendments require review by Legislative Review Subcommittee and/or PEER Subcommittee (for contracts between state agencies) prior to approval by DFA under the following circumstances.
  - a. Amendments to contracts that originally required review by a legislative committee shall require legislative review, if the amendment increases the dollar amount to a resultant total that is higher than any amount previously approved by the legislature for that contract **OR** if the amendment involves major changes in the objectives and scope of the contract.

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- b. Amendments to contracts that originally did not require legislative review shall require legislative review if the amendment increases the compensation to exceed the sum of \$25,000.00.
  3. For applicable contracts over \$10,000.00, a current signed and dated **Contract and Grant Disclosure and Certification Form** shall be submitted for the contractor and all affected subcontractors for every amendment.
  4. Contract amendments are not binding until they are approved and signed by the DHS Director or designee and approved by DFA, if applicable.
  5. The effective date of an amendment to extend an otherwise expiring contract shall be **no later than** the expiration date of the expiring contract.
- C. Development of Amendment
  1. Program division/office should initiate all amendments, except for those necessitated for administrative purposes only and for amendments to contracts for the Together We Can program.
  2. For every amendment, the program division/office should submit an authorization to FOU to develop the amendment. (In those instances where the program division/office developed their own PCS contract, they shall also develop the amendments to that contract.)
  3. Required elements for the authorization for FOU to develop an amendment include
    - a. Completed **Contract Authorization/Input Form (DHS-9190)**
    - b. Any revised or additional attachments to the **Form OSP-1**, if applicable
    - c. Approval/certification of performance indicators
      - (1.) **Performance Based Contracting Certification** completed by division/office staff, for current, unchanged performance indicators
      - (2.) OCC approval for new or revised performance indicators
    - d. Brief statement addressing why these changes were not included in the original contract.
  4. Upon receipt of the amendment authorization, the FOU Supervisor should
    - a. Enter the authorization on the CRU/FOU log
    - b. Complete the **CSS Routing Slip**
    - c. Review the authorization and make and/or coordinate any needed corrections
    - d. Forward the authorization to C.O. along with a memo assigning a submittal Target Date by which the completed amendment is to be submitted to the division/office. **If C.O. cannot meet the Target Date, he/she should request an extension prior to the Target Date.**
  5. The C.O. should enter the receipt date on the CRU/FOU log. He/she should meet with the contractor agency representative, deliver the necessary amendment forms, and explain the amendment requirements.
  6. Upon the contractor's review and signature, the C.O. should review the proposal, clarify any questions, make any corrections necessary (with the contractor's approval), package the amendment, and submit it to program division/office for review and signature by the program division/office Director.

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Upon the division/office Director's signature, the program division/office should submit the amendment to CRU for review.

7. The complete amendment package shall include
  - a. **Amendment to Professional or Consultant Services Contract (Form OSP-1A)** (see *Appendix*)
  - b. **Contract Authorization/Input Form (DHS-9190)** (see *Appendix*).

**NOTE:** Amendments developed by DHS program divisions/offices should include a **Data Input Form (DHS-9191)**, instead of the **DHS-9190**, if elements on the **DHS-9191** are changed from previous agreement.

8. Other elements may be required to complete the amendment. These include, but are not limited to
  - a. **Contract Grant Disclosure and Certification (Form PCS-D) (For applicable contracts over \$10,000.00)** A newly signed and dated form must be completed by the contractor and all applicable subcontractors affected by the amendment **for any amendment that extends the time period or that increases funding from \$10,000.00 or less to above \$10,000.00.** (see *Appendix*)
  - b. **Performance Based Contracting Certification**  
This is required from program division/office for current performance indicators not changed by this amendment.
  - c. **New or Revised Attachments**  
Any new or revised attachments to the **Form OSP-1** should be included.  
**Note:** New or revised performance indicators require current OCC approval.
  - d. **Provider Audit Sign-Off Sheet (PASOS)**  
A newly approved **PASOS** should be included if the time period covered by the previous approved **PASOS** has expired.
  - e. **Reimbursement Rate Increase Approval Form (DHS-1951)**  
An approved **DHS-1951** is required if the amendment increases rates for services. Note exceptions in Chapter Nine.
  - f. **Suspension of the Rules Letter**  
This letter is required for all amendments requiring legislative review that are submitted to DFA after the due date.
  - g. **Arkansas State Building Services Amendment Justification Form**  
This form is a required document for amendments for architectural or engineering services. (see *Appendix*)
  - h. **Certification Regarding Lobbying**  
This certification is required if the amendment results in contractor's funding exceeding \$100,000.00 in federal funds per federal fund source per fiscal year.

**D. Submittal of Amendment**

1. Completed amendment should be secured in a manila folder with metal fasteners at the top right and top left sides. Amendment folder should be

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labeled with the contractor's name. A transmittal memo to CRU and **the CSS Routing Slip** should be attached to the front of the folder. C.O. should enter the submittal date of the PCS contract amendment on the CRU/FOU log.

2. Amendment order, top to bottom, is as follows:
  - a. Right Side
    - (1.) **DHS-9190**
    - (2.) **Form OSP-1A**
    - (3.) Disclosure form(s), if applicable)
    - (4.) Legal attachments, if any
    - (5.) Copies of all relevant purchase orders, if applicable
    - (6.) **Suspension of Rules** letter, if applicable
  - b. Left Side
    - (1.) **DHS-9191**
    - (2.) Correspondence
    - (3.) Certifications

- E. **Amendment Compliance Review**  
See "Contract Compliance Review", Chapter Ten of Contract Manual.
- F. **Amendment Resolution**  
See "Contract Resolution", Chapter Ten of Contract Manual.
- G. **Administrative Certification of Amendment**  
See "Administrative Certification", Chapter Ten of Contract Manual.
- H. **Amendment Submittal to DFA**  
See "Contract Submittal to DFA", Chapter Ten of Contract Manual.
- I. **Amendment Distribution**  
See "Contract Distribution", Chapter Ten of Contract Manual

**XI. Site Visits**

**A. Definition**

Site visits are a means of on-site contract monitoring by FOU of those PCS contracts developed by FOU.

**B. Purpose**

The purpose of site visits is to monitor contracts and assist contractors in achieving and maintaining compliance with billing and client eligibility requirements of the DHS PCS contracts. Site visits address fiscal, administrative and legal advisories and eligibility/billing audits.

**C. Policy**

1. For each PCS contract developed by FOU, C.O. should make a minimum of one site visit per contract year.
2. The site visit should consist of a Service-to-Billing audit to determine if the contractor's on-site documentation supports the DHS billings for which payment has been made. If the contract does not identify services for billing and tracking purposes (i.e., indicate or refer to service(s) by service name and

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code on the **DHS-9190** or **DHS-9191**), the C.O. should substitute a Technical Assistance Site Visit for the Service to Billing Site Visit.

**Note:** Additional issues to be addressed during the site visit include:

- a. Review and assurance of continued accuracy of contractor's and subcontractor(s)'s disclosure form(s)
- b. Review and assurance of continued accuracy of listing of subcontractors, if applicable; and
- c. Completion of Method of Administration

See Appendix for **Checklist for Site Visit Review with Contractor** to be completed at time of visit.

3. For contractors receiving SSBG funding, the site visit should also include a Client Eligibility review to verify the clients' eligibility for services received and to assess the contractor's proper completion of client eligibility forms.
4. Additional site visits may be made as deemed necessary by the C.O. to provide technical assistance and/or to provide training in the areas of contract development, fiscal management, maintenance of required records, etc. They may also be made upon request from program divisions/offices for cause.
5. FOU Supervisors may grant exemptions for certain site visits (e.g., out-of state providers.)

**D. Procedure**

1. The C.O. should schedule an annual on-site visit with the contractor, stating the purpose of the visit and identifying any information or documents to be made available for the visit.
2. Service to Billing Site Visit
  - a. C.O. should select a recent month's billing to audit. The sample to review should consist of 15 – 20 clients selected at random from the billing. If fewer than 15 clients were served, all clients should be reviewed.
  - b. On site, C.O. should review contractor's records to verify that documentation exists for all services billed within the sample.
3. Client Eligibility Site Visit
  - a. C.O. should select a recent month's billing to audit. The sample to review should consist of a minimum of three (3) clients selected at random from the billing.
  - b. On site, C.O. should review clients' records to determine the completeness and accuracy of eligibility forms and should interview clients to verify their eligibility. (For Protective Services and Substitute Care services, a face-to-face interview with the client is not required.)

**E. Report**

1. After the site visit and any follow-up verification are completed, the C.O. should complete the site visit report.

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2. C.O. should forward the site visit report to the FOU Supervisor, the program division/office, and the contractor/grantee.
3. FOU Supervisor should review the report and forward it to CRU to be filed in the contract file.
4. Any serious discrepancies determined by the site visit should be referred by the C.O., through the C.O.'s Supervisor, to OCC, Audit or Fraud Investigations sections, as appropriate.

**XII. Billing**

- A. For those contracts containing SSBG funding, C.O. should
  1. Provide instructions on SSBG client eligibility and SSBG billing.
  2. Supply the SSBG billing forms and SSBG client eligibility forms to the provider. These forms include:
    - a. **DHS-100, Application for Social Services Block Grant Funding**
    - b. **DHS-160, Notice of Action to Applicants for and Recipients of SSBG Services**
    - c. **DHS-0145, Client and Service Data Sheet for Social Services Block Grant Funding**
- B. For all contracts developed by FOU, C.O. should
  1. For those that are reimbursed on an Actual Cost basis, supply the provider with an appropriate letter bill format or assist the provider in preparing an appropriate format if necessary.
  2. For those that are reimbursed on an Actual Cost basis, review the billing to compare line item expenditures against the budget unless C.O. verifies the division/office assumes this responsibility.
  3. Provide technical assistance to provider as required or as requested by the provider or division/office.

**XIII. Line Item Adjustments**

- A. Policy
  1. Line item adjustments pertain to actual cost reimbursement contracts only and do not affect the total reimbursable expenses, total compensation expenses, or total liability of the contract.
  2. Line item adjustments should have prior approval from CRU Manager, or designee, before adjustments are implemented.
  3. If deviation from the amount budgeted will not exceed \$500.00 or 10% of the line item from which funds are being moved (whichever is greater), no line item adjustment is necessary.
  4. **An amendment is required for any budget revision that**
    - a. Affects the total liability of the agreement
    - b. Affects the overall rate per unit of service
    - c. Changes totals of compensation and reimbursable expenses
    - d. Adds a new fund source (fund, fund center, or commitment item)

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e. Affects the provider or DHS in a material way

B. Procedure

1. Line item adjustments should be initiated by the program division/office or by the contractor (in which case the division/office should indicate approval on the line item adjustment authorization.)
2. FOU develops line item adjustments for all PCS contracts upon receipt of individual authorizations from the DHS program divisions/offices requesting such line item adjustments. For those contracts that are developed by the division/office, upon case-by-case approval, the division/office shall develop the line item adjustments.
3. Upon receipt of the request for a line item adjustment from the division/office, the FOU Supervisor shall
  1. Review the request
  2. Make and/or coordinate any needed corrections
  3. Forward the request to C.O. along with a memo assigning a submittal Target Date by which the completed line item adjustment is to be submitted to CMU. If the C.O. cannot meet the Target Date, he/she should request an extension prior to the Target Date.
  4. Upon receipt of the authorization from the FOU Supervisor, the C.O. shall complete the line item adjustment proposal, which includes
    - a. Revised or adjusted budget and budget justification
    - b. Indication of the division/office's review and approval
    - c. Place for the CRU Manager, or designee, to sign and date for approval or disapproval
4. C.O. shall submit line item adjustment proposal to CRU for review and signature.
6. Resolution and distribution of line item adjustments parallel that for contracts and amendments.

**XIV. Changes**

- A. Minor revisions or administrative corrections may be accomplished by an administrative "change" action. "Change" actions affect only the internal administration of a contract and do not materially affect the contractor or DHS in any way.
- B. FOU develops "change" actions for all PCS contracts upon receipt of individual authorizations from the DHS program divisions/offices requesting such "change" actions. For those contracts that are developed by the division/office, upon case-by-case approval, the division/office shall develop the "change" action.
- C. Upon receipt of the request for a "change" action from the division/office, the FOU Supervisor should
  1. Review the request
  2. Make and/or coordinate any needed corrections
  3. Forward the request to C.O. along with a memo assigning a submittal Target Date by which the completed "change" action is to be submitted to CMU. If

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the C.O. cannot meet the Target Date, he/she should request an extension prior to the Target Date.

- D. The complete “change” packet is required to include
  1. **Contract Authorization/Input Form (DHS-9190)**, or **Form DHS-9191**, if applicable, for those “change” actions developed by the division/office.
  2. Copy of written notification to the contractor advising of the change.
  3. Explanatory memo from division/office requesting change, if applicable
- E. C.O. should submit the completed proposal to CMU. If FOU developed the “change” action, C.O. should submit a copy of the transmittal memo and the **DHS-9190** to Supervisor or designee for tracking purposes. C.O. should also notify Supervisor by phone or electronic mail on the day of submittal.
- F. Upon receipt, CMU should
  1. Verify completeness of the “change” proposal. Incomplete change proposals should be forwarded to the CMU Manager for resolution.
  2. Input the “change” into the system, and initial the **DHS-9190** or **DHS-9191** (if applicable).
  3. Forward the original “change” packet to CRU for inclusion in the contract.
  4. For those changes developed by FOU, forward a copy of the initialed **DHS-9190** to the C.O.’s Supervisor, if applicable. Supervisor will forward copies to the C.O. and the program division or office.
  5. For those changes developed by division or office staff, forward a copy of the initialed **DHS-9191** to the contract developer, if applicable.

**XV. De-obligation of Funding From Expired Contracts**

- A. The funding division/office should send a certified letter to the contractor whose expired contract is to have funds de-obligated. The letter should address, at a minimum, the following elements:
  1. Specifics as to the amount being de-obligated, funding source(s), and effective dates of the contract.
  2. Statement advising the contractor that the contractor must notify the division/office within a determined number of days (at least five) of any additional billings to the contract.
  3. Statement advising the contractor that if notification is not received from the contractor within the timeframe indicated the funds will be de-obligated.
- B. The division/office should complete the **DHS-9190** form and submit it along with a copy of the letter to FOU. FOU should review the information then forward it to CMU.
- C. Upon receipt, CMU should
  1. Input the de-obligation into the system and initial the **DHS-9190**.
  2. Forward the original de-obligation packet to CRU for inclusion in the contract.
  3. Forward a copy of the initialed **DHS-9190** to the FOU Supervisor. Supervisor will forward to the program division or office.

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**XVI. Records Retention**

- A. DHS should retain all contract information for a minimum of five years after final payment is made. This includes, but is not limited to, the following information
  - 1. Original contract, amendments, and all related documents, correspondence, etc.
  - 2. Contractor billings
  - 3. Site visit reports
  - 4. Audit reports and findings
  
- B. In the event any audit, litigation, or other action is initiated before the end of the five year period, records should be retained until all issues arising out of the action are resolved or until the end of the five year period, whichever is later.

## CHAPTER ELEVEN VOUCHER AGREEMENTS

### I. Policy

- A. The DHS voucher programs provide pre-authorized vouchers for services to persons who have met established eligibility requirements through the program division/office. Prior approval from OAS is required for program divisions/offices to utilize the voucher format.
- B. The Division of Child Care and Early Childhood Education (DCCECE) and the Division of County Operations (DCO) issue vouchers for child day care services. These programs may use state and federal funds.
- C. The Division of Developmental Disabilities Services (DDS) issues vouchers for services through the Federal Early Intervention (FEI) program.
- D. See the following for more detailed information
  - 1. Social Services Block Grant Program Manual, Appendix C, Ch. 6
  - 2. DCCECE Child Care Eligibility Policy
  - 3. DCO Transitional Employment Assistance (TEA) Policy
  - 4. DDS policy

### II. Procedures

- A. Enrollment
  - 1. For enrollment in the day care voucher program, licensed or registered day care providers route a completed **Voucher Participant Agreement (DHS-9800)** and a completed **W-9 Form** to DCCECE.  
  
DCCECE performs the following functions:
    - a. Reviews the **DHS-9800** and **DHS-9801** and any attachments
    - b. Resolves any discrepancies
    - c. Obtains signature of the DCCECE Fiscal Manager signifying administrative certification
    - d. Enters the approval status in the voucher program system
    - e. Submits the **DHS-9800** and **DHS-9801** to the CRU Records Room for filing.
  - 2. For enrollment in the FEI program, enrollment packets (including **DHS-9801** and **W-9 Form**) are sent by DDS to providers who are certified by DDS. The packets are completed by the providers and returned to DDS. DDS processes the forms as necessary and submits them to the CRU Records Room for filing.
- B. Service Availability
  - 1. Individuals seeking child day care voucher program services apply at the local county DHS office. At the time of application, the applicant is provided a current DHS register of participating providers from which the applicant may select a provider. The DHS divisional representative reviews the application and determines the applicant's eligibility.
  - 2. Individuals seeking FEI program services must meet FEI eligibility criteria and request services through a DDS Service Coordinator or a Service Coordinator in a certified FEI program. The applicant is provided a list of participating providers in his/her area from which a provider may be selected.

## CHAPTER ELEVEN VOUCHER AGREEMENTS

### C. Authorizations

1. DHS divisional representatives complete an authorization form for each individual determined eligible.
2. For child day care voucher services, the authorization is mailed to the selected childcare provider and a form **DCC-531, Notice and Approval**, is given to the applicant. The authorization is used to reserve funds for a specified period, not to exceed six months.
3. For FEI program voucher services, the authorization is given to the provider and copies are sent to the applicant and DDS Service Coordinator. The authorization is used to reserve funds for a specified period of time, not to exceed the current fiscal year.

### D. Billing

1. To receive reimbursement for services provided through the voucher program, a billing form/log must be completed at the end of each month (or in some case, bi-monthly) by each provider.
2. For child day care participants, bills are processed utilizing one of the following methods:
  - a. Entering the billing information through a modem (personal computer).
  - b. Entering the billing information through the telephone keypad into the Voice Mail Exchange (VMX) automated billing system.
  - c. Mailing the paper bill to CSS, which enters the billing information into the computer system.
  - d. Billing via the internet.
3. For FEI participants, the provider submits electronic billing through EDS.

### E. De-obligation of Funds

#### 1. Day Care Voucher Program

If, prior to the end of the obligated period, for child day care services, it is verified that an individual is no longer eligible for or no longer in need of voucher services, the divisional representative makes the appropriate notation in the computer system. The system automatically de-obligates un-utilized funds after two months.

#### 2. Federal Early Intervention Program

If, prior to the end of the obligated period, for FEI services, it is verified that an individual is no longer eligible for or no longer in need of voucher services, the DDS Management Project Analyst I makes the appropriate notation in the EDS computer system.

## CHAPTER TWELVE GRANTS

### I. Policy

- A. A grant is an award of resource assistance to promote a program or goal of public benefit, as authorized by the funding agency. The nature of the grant, the eligible recipients, the method of award, and the terms and conditions depend on the specifics of the statute that created the grant program (if publicly funded) and the implementing regulations.
- B. In choosing whether to award funds by grant or contract, states generally follow the selection logic established in the federal Grant and Cooperative Agreement Act of 1977, as amended, which indicates that a procurement contract is appropriate when the principal purpose is to acquire property, products, or specific services for the direct use of the government in carrying out its primary functions. Use of a grant is appropriate when the principal purpose is more generalized public support, stimulation or capacity-building functions. If there is a question as to the most appropriate agreement format, the division/office should obtain a written advisory from OCC.
- C. In accordance with Arkansas statutory requirement (Act 1032 of 1999 and Arkansas Codes Annotated § 19-4-2201 and § 19-4-2202), grants are subject to review by the legislature prior to implementation.
1. Legislators would like to provide meaningful oversight of the expenditure of public resources, and they are interested in learning about service programs that might benefit their constituents. During the legislative committee sessions, representatives from the program divisions should be ready to answer all the logical questions that legislators might have about the specific grants on that day's agenda, as well as more general questions concerning the entire program. Typical questions include:
    - a. How and why were the recipients selected?
    - b. If there were a competitive selection process,
      - (1.) How many responses were received?
      - (2.) How did the other proposals or applications stack up?
      - (3.) Who was involved with the selection process?
    - c. How much program discretion is left to the state and how many of the program parameters are dictated by the federal funding agency (in the case of federally funded programs)?
    - d. How does the program division/office monitor performance?
    - e. What are the results of previous programmatic monitoring for this grantee and this program?
    - f. Are there any special or extraordinary federal reporting requirements?
    - g. What is the geographic distribution of grantees in this program throughout the state?
    - h. What is the current funding level, and what are the future plans for this program?
  2. Non-discretionary grants are exempted from prior legislative review.
  3. Certain discretionary grants are exempted from prior legislative review. Exempted grants include
    - a. Grants for \$10,000.00 or less
    - b. Grants to governmental entities
    - c. Disaster relief grants

## CHAPTER TWELVE GRANTS

- d. Scholarships to post-secondary students
  - e. Grants containing confidential information, the disclosure of which is determined by the agency to constitute a violation of other provisions of law regarding disclosure
4. If DHS determines that an emergency exists requiring the discretionary grant to be awarded prior to legislative review, DHS may award the discretionary grant prior to legislative review and shall immediately notify the Legislative Council or Joint Budget Committee as to the facts constituting the emergency.

### II. Grant Requirements

- A. Much of the administrative guidance which applies to PCS contracts also applies to grants. Examples include:
  - 1. OCC Audit Section must provide clearance concerning current audit status of proposed grantees.
  - 2. Grantees should be corporate or governmental entities and not individuals or sole proprietors. Any exceptions must be approved in writing by OCC.
  - 3. Prior to award, the granting agency should insure that the intended grantee is not debarred or excluded from participation in government programs.
  - 4. Any grant with a Constitutional Officer or his/her spouse shall require the grantee to disclose, in accordance with Executive Order 98-04, and Act 34 of 1999. Prior approval of the Joint Budget Committee during legislative sessions or the Legislative Council between sessions AND the Governor is required.
  - 5. Certification regarding lobbying is required for those grants over \$100,000.00 in federal funds.
  - 6. ALL completed grants and all supporting documentation of selection, award, and monitoring activities should be retained on file by the program division/office for a minimum of five years.
  - 7. Grantees shall insure non-discrimination and equal opportunity by sub-grantors in compliance with all applicable federal laws, regulations, executive orders and civil rights rules and regulations.
  - 8. A stamped or automated signature by a party to the grant agreement is considered valid and binding unless there is evidence that it was not entered with present intention to authenticate a writing.
- B. It is the responsibility of the applicable program division/office to comply with Act 1032 of 1999 by categorizing each grant as
  - 1. Discretionary, and subject to legislative review
  - 2. Discretionary, and exempt from legislative review
  - 3. Non-discretionary (and not subject to legislative review)
- C. Grants subject to legislative review are due to FOU for development, if required, and to CRU for review in accordance with the same input dates established in the **Professional/Consultant Services Contract Deadlines** distributed by CSS. Cooperation in meeting the published deadlines will avoid delays in implementation of the grant.

## CHAPTER TWELVE GRANTS

D. Grants are normally limited to the biennium for which the appropriation is designated. If a grant is to exceed the biennium, it must contain language concerning the appropriation.

E. Reimbursement Guidelines

The grantee and division/office should agree upon the method of reimbursement before a grant is developed. In no case will payments exceed the maximum liability of the grant. The following methods are acceptable for public or private grantors.

1. Actual Cost Reimbursement

Actual cost reimbursement is based on a complete budget/cost allocation and a line-item justification.

2. Scheduled Reimbursement

Scheduled reimbursement is based on a schedule of costs or line-item budget submitted by the grantee. The cost schedule is derived from the recurrent preset expenses. Through the cost schedule, the grantee assures that certain expenses will be incurred during specific periods of time. Reimbursement is based on the cost schedule or budget and payment corresponds to the actual incurred expenses for each specified period.

F. Grant Format

1. If a program division/office uses a grant to promote public benefit, a certain degree of latitude and discretion is involved in selecting the appropriate format. Since each grant program must conform to the parameters, constraints, and conditions of the founding legislation and implementing directives that created it, there is no single standardized form designated for use by state agencies. In some cases, highly specialized grant formats have been developed to carry out the grant program and corresponding state plan for implementation. Examples include grant programs in fulfillment of the Community Services Block Grant, welfare reform, childcare legislation, and services for the elderly.

### NOTE:

If a specialized format is used, it is the responsibility of the program division/office Director to insure that all required elements are covered. These include, at a minimum, assurances regarding

- Compliance with federal non-discrimination legislation
- Administrative assurances and monitoring
- Programmatic assurances and monitoring
- Financial terms and conditions

2. In the absence of an existing grant format tailored to the specific program requirements, the program division/office should use the form **DHS-9600 (Grant Agreement)** as a standardized agreement format. Creation and utilization of a new tailored grant format (to be used in place of the **DHS-9600**) should be approved by OCC. (see **DHS-9600** in Appendix)

G. There is NO dollar threshold for grants below which a purchase order can be executed in lieu of the standard grant form (as there is for PCS contracts), i.e. low-dollar grants CANNOT be executed as purchase orders instead of as grants.

### III. Development of Grant

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FOU develops all grants upon receipt of individual authorizations from the DHS program divisions/offices requesting such grants. On a case-by-case basis and upon consultation with CSS, program divisions/offices may conduct their own development of certain grants.

- A. Required elements for the authorization include
1. Completed **Data Input Form (DHS-9191)** (except for those grants paid through the voucher system)
  2. Completed page 1 of the **Grant Agreement form (DHS-9600)**
  3. Any legal attachments
  4. Any other information necessary, including financial information

Upon receipt of the authorization, the FOU Supervisor should

1. Enter the grant on the CRU/FOU log
  2. Review the authorization and make and/or coordinate any needed corrections
  3. Forward the authorization to FOU C.O. along with a memo assigning a submittal Target Date by which the completed grant is to be submitted to the division/office. If the C.O. cannot meet the Target Date, he/she should request an extension prior to the Target Date.
- B. The C.O. should enter the receipt date on the CRU/FOU log. He/she should meet with the grantee representative, deliver the necessary grant forms, and explain the grant requirements.
- C. Upon the grantee's review and signature, the C.O. should review the proposal for completeness, using the "Grant Checklist" as a tool. (*see Appendix*) C.O. should clarify any questions, make any corrections necessary (with the grantee's approval), package the grant and submit it to the program division/office for review and signature by the program division/office Director.
- D. Upon the division/office Director's signature, the program division/office should submit the grant to CRU for review.

E. **Required elements for the complete grant include:**

1. **Grant Agreement Form (DHS-9600)** (*see Appendix*)
2. **Attachments**
  - a. All attachments should be numbered in sequential and consistent form
  - b. The label on each page of each attachment should include
    - (1) Grantee name
    - (2) Vendor number
    - (3) Grant number (assigned by the program division/office)
    - (4) Attachment number
    - (5) Effective date
    - (6) Page number
3. **Budget Information**
  - a. For grants reimbursed on an **Actual Cost** basis

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- (1.) An itemized listing of allowable program expenses and justification are required elements. The total itemized listing should equal the total DHS funding in the grant.
  - (2.) The itemized listing should be made a legal attachment.
- b. For grants reimbursed on a **Scheduled Reimbursement** basis
  - (1.) An itemized listing of allowable program expenses to be purchased and justification are required elements. The total itemized listing should equal the total DHS funding in the grant.
  - (2.) Through the itemized listing, the grantee agency assures that certain expenses will be incurred during specific periods of time.
  - (3.) A payment schedule should include the amount and dates of payments to be made during the grant period. The first payment should not be earlier than three weeks after the effective date of the grant.
  - (4.) The schedule of payments should include a requirement for expenditure reports accompanying invoices.
  - (5.) The itemized listing and schedule of payments shall be made a legal attachment.
4. **Contract and Grant Disclosure and Certification Form, if applicable**
  - a. Any grant with a Constitutional Officer or his/her spouse shall require the grantee to disclose, in accordance with Executive Order 98-04, and Act 34 of 1999. Prior approval of the Joint Budget Committee during legislative sessions or the Legislative Council between sessions AND the Governor is required.
  - b. Disclosures requiring prior approval should be resolved prior to signature on the grant by DHS.
  - c. The **Contract and Grant Disclosure Form** shall not be made a legal attachment.
5. **Provider Audit Sign-Off Sheet (PASOS)** (*see Appendix and Chapter Six of Contract Manual*)
  - a. Every grant should include a **PASOS** that has been approved by OCC, Audit Section.
  - b. This approval should indicate the grantee's audit status is "current".
  - c. The **PASOS** shall not be made a legal attachment.
6. **Data Input Form (DHS-9191)** (*see Appendix*)
  - a. The **DHS-9191** is not required for those grants paid through the voucher system.
  - b. The **DHS-9191** shall not be made a legal attachment.

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G. Other elements may be required to complete the grant. They include, but are not limited to

1. **Certification Regarding Lobbying**

- a. Certification is required for all grantees that receive in excess of \$100,000.00 in federal funds **per Federal fund source per fiscal year**. This pertains to **all** federal funds received by the grantee, not just the federal funds in this grant.
- b. Certification should be indicated on **Form DHS-9350, Certification Regarding Lobbying** unless provided elsewhere in the grant. (see *Appendix*)
- c. Certification requires an original signature and date by the grantee.
- d. Certification shall be made a legal attachment to the grant.

2. **Matching Terms**

- a. Specification of matching terms is required when funds included in the grant have a required match from state and/or local funds.
- b. See **Terms and Conditions** in the Appendix for sample format for specifying matching terms.
- c. Matching terms shall be made a legal attachment.

3. **Independent Contractor Checklist (DHS-9356) (see Appendix)**

- a. This form should be completed by program division/office if grantee is an individual or sole proprietor.
- b. This form is used to assess the status of the individual or sole proprietor as an independent grantee rather than a DHS employee.
- c. The **DHS-9356** shall not be made a legal attachment.

4. **Waivers of Policy**

- a. Requests for waiver of any DHS promulgated policy should be submitted by the requesting division/office Director or designee to the OAS Chief Administrative Officer or designee for approval.
- b. Waivers shall not be made legal attachments.

5. **Certificate of Authority from the Secretary of State**

- a. The **Certificate of Authority** is a required document for grants with out-of-state corporations transacting business in Arkansas (see *"Foreign Corporations Transacting Business in Arkansas" in Appendix*).
- b. If the out-of-state grantee does not operate within Arkansas or is otherwise exempt, a **Certificate of Authority** is not necessary.
- c. The **Certificate of Authority** shall not be made a legal attachment.

H. **Submittal of Grant**

1. Completed grant should be secured in a manila folder with metal fasteners at the top right and top left sides. Grant folder should be labeled with the grantee's name. A transmittal memo to the division/ office should be attached to the front of the folder. C.O. should enter the date of grant submittal on the CRU/FOU log.

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2. Grant order, top to bottom, is as follows
  - a. Right side of folder
    - (1.) **DHS-9600**
    - (2.) Legal attachments
    - (3.) Disclosure form(s), if applicable
    - (4.) Justification for grant exceeding one calendar year, if applicable
  - b. Left side of folder
    - (1.) **DHS-9191**
    - (2.) Supporting documents
    - (3.) Correspondence

### **I. Grant Compliance Review**

See "Contract Compliance Review", Chapter Ten of Contract Manual.

### **J. Grant Resolution**

See "Contract Resolution", Chapter Ten of Contract Manual.

### **K. Administrative Certification**

See "Administrative Certification", Chapter Ten of Contract Manual.

### **L. Processing of Signed Grants**

1. CRU should forward non-discretionary and exempt discretionary grants for distribution, in the manner indicated in Section M below.
2. CRU shall forward discretionary grants for Legislative approval and maintain a copy in the CRU Record Room. Upon notification that the grant is approved, CRU should distribute it in the manner indicated below.

### **M. Grant Distribution**

1. Upon approval of the grant by DHS Director or designee, and by DFA, if applicable, CRU will receive the original approved grant and make the necessary copies.
2. CRU should forward a complete copy of the grant to
  - a. Grantee
  - b. DHS Program Agency
  - c. CMU Manager (along with the **DHS-9191**, if applicable)
  - d. FOU Manager (if FOU developed the grant)
3. The original grant should be maintained on file in the CRU Record Room.
4. Upon receipt of the signed grant, FOU Manager should forward a copy of the grant to the FOU C.O.
5. Upon receipt of the signed grant and the **DHS-9191**, CMU Manager should
  - a. Enter the grant data into the DHS contract/grant payment system and initial the **DHS-9191** where indicated
  - b. Forward the original initialed **DHS-9191** to the CRU Records Room and to the C.O.'s supervisor (or to the grant developer within the division/office if not developed by FOU.)

## CHAPTER TWELVE GRANTS

### IV. Grant Amendments

#### A. Timeframes

Grant amendments should adhere to the same timeframes outlined for the development of new grants.

#### B. Amendment Requirements

1. Amendments to grants are required when any element on the **DHS-9600** (or approved alternate format) or any of the legal attachments is revised to the extent that it materially affects the grantee or DHS in any way. Amendments shall be mutually agreed upon by the grantee and DHS.
2. Minor revisions or administrative corrections that affect only the internal administration of a contract do not require an amendment; these may be accomplished as "Change" actions. (*see Section VIII, Changes*)
3. The effective date of an amendment to extend an otherwise expiring grant shall be no later than the expiration date of the expiring grant.
4. In the absence of an existing grant amendment format tailored to the specific program requirements, the program division/office should use the **DHS-9601 (Grant/Other Amendment Agreement)** as a standardized agreement format. Creation and utilization of a new tailored grant amendment format (to be used in lieu of the **DHS-9601**) should be approved by OCC.

#### C. Development of Amendment

1. Program division/office should initiate all grant amendments, except for those necessitated for administrative purposes only or those for the Together We Can program.
2. For every amendment, the program division/office should submit an authorization to FOU to develop the amendment. (In those instances where the program division/office developed their own grant, they shall also develop the amendments to that grant.)
3. The authorization from the program division/office is required to include
  - a. **Data Input Form/Division Authorization (DHS-9191)**, if required for the original grant and if there are changes made to any of the following grant elements:
    - (1.) Effective dates
    - (2.) Coding
    - (3.) Funding
    - (4.) Rates
    - (5.) Services
  - b. Revised or new attachments, if any
  - c. Brief memo authorizing the amendment and stating the changes to be made
4. Upon receipt of the amendment authorization, the FOU Supervisor should
  - a. Enter the authorization on the CRU/FOU log.

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- b. Review the authorization and make an/or coordinate any needed corrections.
  - c. Forward the authorization to C.O. along with a memo assigning a submittal Target Date by which the completed amendment is to be submitted to the division/office. If the C.O. cannot meet the Target Date, he/she should request an extension prior to the Target Date.
5. The C.O. should enter the receipt date on the CRU/FOU log. He/she should meet with the grantee agency representative, deliver the necessary amendment forms, and explain the amendment requirements.
  6. Upon the grantee's review and signature, the C.O. should review the proposal, clarify any questions, make any corrections necessary (with the grantee's approval), package the amendment, and submit it to the program division/office for review and signature by the program division/office Director. Upon the division/office Director's signature, the program division/office should submit the amendment to CRU for review.
  7. The complete amendment is required to include the **Grant/Other Amendment (DHS-9601)**. Other elements that may be required to complete the amendment include, but are not limited to, the following:
    - a. **Data Input Form/Division Authorization (DHS-9191)** (except for those grants paid through the voucher system.)
    - b. **PASOS**, if the time period covered by the previous PASOS has expired.
- D. Submittal of Amendment
1. Completed amendment should be secured in a manila folder with metal fasteners at the top right and top left sides. Amendment folder should be labeled with the grantee's name. A transmittal memo to the division/office should be attached to the front of the folder. C.O. should enter the grant amendment submittal date on the CRU/FOU log.
  2. Amendment order, top to bottom, is as follows
    - a. Right Side
      - (1.) **DHS-9601**
      - (2.) Legal attachments, if any
      - (3.) Disclosure Form(s), if applicable
    - b. Left Side
      - (1.) **DHS-9191**, if applicable
      - (2.) Supporting documentation
      - (3.) Correspondence
- D. Amendment Compliance Review  
See "Contract Compliance Review", Chapter Ten of Contract Manual.
- E. Amendment Resolution  
See "Contract Resolution", Chapter Ten of Contract Manual.
- F. Administrative Certification  
See "Administrative Certification", Chapter Ten of Contract Manual.

## CHAPTER TWELVE GRANTS

G. Amendment Distribution  
See "Grant Distribution", Chapter Twelve, Section M of Contract Manual.

### V. Monitoring

Program division/office policy and procedures and requirements of the funding source determine monitoring requirements for grants. Program agencies may include specific requirements in the grant in relation to monitoring, as indicated by circumstances. Monitoring may be conducted by FOU upon justified request from program divisions/offices.

### VI. Billing

See "Contract/Grant Invoicing", Chapter Thirteen of Contract Manual.

### VII. Line Item Adjustments

See "Line Item Adjustments", Chapter Ten of Contract Manual.

### VIII. Changes

See "Changes", Chapter Ten of Contract Manual, with the exclusion of the reference to Form DHS-9190, which is not required for grants.

### IX. Records Retention

See "Records Retention", Chapter Ten of Contract Manual.

## CHAPTER THIRTEEN CONTRACT/GRANT INVOICING

### I. Procedure

A. For those contract and grant payments processed through CMU, It takes approximately seven to ten working days from the time an invoice reaches CMU for a warrant to be printed and ready to mail. Before any invoice is approved for those payments processed through CMU, the following requirements must be met:

1. CMU should receive a copy of the legal document and use it to monitor the payment request. All original signed contracts, and all original signed grants which are developed on the standardized format, should be on file in the CRU Record Room.
2. Each contractor/grantee should have a **Request for Taxpayer Identification Number and Certification form (W-9)** on file with OAS before payment can be processed. **W-9 Forms** may be obtained from the Internal Revenue Service office.
3. Providers should comply with the DHS audit requirements as outlined in Arkansas Department of Human Services Audit Guidelines. Copies may be obtained from

Arkansas Department of Human Services  
Office of Chief Counsel Audit Section  
P.O. Box 1437 – Slot S270  
Little Rock, Arkansas 72203-1437

### B. Invoice Submission

1. Invoices should be submitted to the division/office with which the contractor/grantee has a legal agreement unless the contractor/grantee is given other instructions.
2. The division/office should check all invoices and indicate their approval with a full, legible signature, date, and the words "Approved to Pay". These should be routed to CMU as soon as possible for processing.

### C. Summary of DHS Invoice Procedures

1. An original invoice or agency-produced invoice is required. **NOTE:** If payment involves multiple appropriations/ characters, an original invoice must be submitted for each individual funding stream.
2. Products of facsimile (FAX) transmission, copier, or "cut and paste" invoices, and signed facsimiles or copies of invoices are not considered valid original invoices.
3. Only "official" invoices and copies prepared by the vendor or agency prepared document signed by the vendor will be accepted.
4. If the vendor cannot provide an invoice, an agency prepared invoice signed manually on an original document and all copies by a responsible representative of the vendor will be accepted. The representative's title and signature must be shown on all originals and copies.
5. A document submitted as an invoice must meet the following requirements
  - a. The **business name, address, contract number or grant number, AASIS purchase order number, and Tax Identification Number or**

**CHAPTER THIRTEEN  
CONTRACT/GRANT INVOICING**

**Social Security Number** are required on original and agency prepared invoices.

- b. If the name of the business firm is not printed on the invoice, but has been placed on it by rubber stamp, typewriter, or in ink, the original and all copies of the invoice must be signed manually by an official or agent of the business firm and must show the agent's official title.
  - c. All invoices must be billed to the agency.
  - d. The invoice must have a complete description of the goods or services being billed. Abbreviations shall not be used on agency-produced schedules.
  - e. Invoices for services must have the date(s) of service.
  - f. The invoice must have the unit price and number of units billed or the lump sum price being billed. The invoice must also include the total amount billed. The information on the invoice must agree with the terms of the applicable contract or purchase order.
  - g. If the invoice is to be paid by direct deposit, the invoice should include the notation "DIRECT DEPOSIT" in the upper right hand corner.
  - h. If the invoice is to be paid separate and apart from other invoices, the invoice should include the notation "SEPARATE PAYMENT" in the upper right hand corner.
6. If two or more names, corporate entities and/or addresses are printed on the invoice, the letterhead used for invoices must be specifically that of the payee, matching the applicable W-9 and vendor file.
7. For invoices with multiple pages, each page must adhere to the requirements listed above in items 1. through 6.
8. For contracts reimbursed on an actual cost basis, the expenses should be identified as compensation or reimbursable.
9. CMU staff will correct payment requests submitted without all of the above information if possible. All verbal changes agreed to by the program division/office and the contractor/grantee should be documented on the payment request form. The CMU staff person should indicate "Approved to Pay", sign and date the request, and forward to OFM/AP.
10. Prior to the end of the state's fiscal year, CMU should submit information to all contract service providers and to all divisions/offices regarding instructions for end-of-year billings.
- D. Contractor/Grantee Expenditure Reports
- 1. Contractors/grantees may be required by the terms of the contract or grant to submit periodic expenditure reports. These reports should be submitted as required or payment requests will be held in a pending status. The format of the expenditure report should agree with the budget in the contract or grant. Reports should be mailed to

Arkansas Department of Human Services  
Contract Support Section

**CHAPTER THIRTEEN  
CONTRACT/GRANT INVOICING**

P.O. Box 1437 – Slot W205  
Little Rock, Arkansas 72203-1437

2. For grants and contracts reimbursed on a scheduled reimbursement basis, CMU may reconcile actual expenditures against the payment schedule and offset scheduled payments, if required by the terms of the grant or contract.

E. Monitoring for Contract/Grant Compliance

Requests for payment not complying with all terms of the signed agreement will be held in pending status until resolved.

F. Recovery of Overpayments

All recognized overpayments should be forwarded to the Accounting Supervisor, CMU. The Accounting Supervisor will draft collections correspondence for signature by the Assistant Director, CSS, and route recovery of funds through OFM/AR.

G. Settlements

All agreements that require settlement should be reconciled as soon as possible following expiration of the agreement. Each contractor/ grantee should be notified in writing of all amounts payable or receivable and the procedures necessary to accomplish the settlement.

H. Internal Revenue Service (IRS) Levies

All IRS levies will be forwarded to CMU. The CMU Accounting Supervisor will receive and forward all payments specified to the IRS until notified that the levy has been satisfied or released.

# **APPENDIX**

- A. Legislation and DFA Regulations**
- B. Forms and Instructions**
- C. Sample Correspondence**

## **A. Legislation and DFA Regulations**

**ACT 1239 of 1993  
(Rate Increases)**

**SECTION 73.** Notwithstanding any other provision in federal law or departmental commitment which may exist to the contrary, the Department of Human Services shall not increase any reimbursement rate to any provider or provider groups supported in whole or in part by funds administered by the Department of Human Services, nor shall it adopt any other rule, regulation, or amendment to the Arkansas State Medicaid Plan that would result in an obligation of the general revenues of the State, without first seeking and receiving the approval of the Governor and the Chief Fiscal Officer of the State.

*(Refer to Arkansas Codes Annotated 20-76-212 and 20-77-110)*

**ACT 1255 of 1993  
(Performance Based Contracting)**

**ACT 1255 of 1993  
A BILL  
As Engrossed: 4/2/93**

**State of Arkansas  
79<sup>th</sup> General Assembly  
Regular Session, 1993  
HOUSE BILL 1797**

**By: Representative Flanagin, Collier, Landers, S. Miller, Mitchell, Hogue, Willems, Rice, Watts, Fairchild, Wagner, Wingfield, Goodwin, Gibson, Walker, Dietz, Thurman and Calhoun**

**For An Act To Be Entitled**

**“AN ACT TO REQUIRE THE STATE HOSPITAL BOARD AND THE DEPARTMENT OF HUMAN SERVICES TO DEVELOP AND USE PERFORMANCE BASED CONTRACTS; AND FOR OTHER PURPOSES.”**

**Subtitle**

**“TO REQUIRE THE STATE HOSPITAL BOARD AND THE DEPARTMENT OF HUMAN SERVICES TO DEVELOP AND USE PERFORMANCE BASED CONTRACTS.”**

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:**

**SECTION 4.** This act shall become effective July 1, 1993

**SECTION 5.** All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

**SECTION 6.** If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provision or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

**SECTION 7.** All laws and parts of laws in conflict with this act are hereby repealed.

**SECTION 8.** The General Assembly finds that contracts including a performance evaluation provision will not only protect the state’s investment of tax dollars but will also provide information that can help improve programs and the services they provide; that this act provides for the inclusion of performance evaluation provisions in all state agency contracts; and that in order to protect the integrity of state funded programs, it is essential that state agencies entering into contracts immediately implement performance evaluations. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.

Approved Jim Guy Tucker  
Governor 4-20-93

*(Refer to Arkansas Code Annotated 19-4-1716)*

**ACT 34 of 1999  
(Disclosure)**

**State of Arkansas  
82<sup>nd</sup> General Assembly  
Regular Session, 1999  
Senate Bill 20**

**By: Senators Beebe, Harriman, Argue, Bearden, Bisbee, Bradford, Brown, Canada, Critcher, DeLay, Edwards, Everett, Fitch, Gordon, Gwatney, Hill, Hoofman, Hopkins, Hunter, Kennedy, B. Lewellen, Mahony, D. Malone, Riggs, Roebuck, Ross, Russ, Scott, K. Smith, B. Walker, Walters, Webb, Wilson, Wooldridge**

**By: Representatives B. Johnson, Kidd, Agee, Angel, Bennett, Bevis, Biggs, Bledsoe, Bond, Bookout, Broadway, Buchanan, Bush, Cleveland, Cook, Creekmore, Davis, Dees, Dugger, Elliott, Faris, Ferguson, Ferrell, Files, French, Gillespie, Gipson, Glover, Green, Gullett, Haak, Hale, Harris, Hathorn, Hausam, Hendren, Hickinbotham, Horn, House, Hunt, Jacobs, G. Jeffress, J. Jeffress, Jones, Judy, King, Lancaster, Lavery, Lendall, Lynn, Magnus, P. Malone, McGehee, Milligan, Milum, Minton, Morris, Napper, Oglesby, Pappas, Parks, Prater, Rackley, Salmon, Scrimshire, Seawel, Sheppard, Shoffner, Simmons, M. Smith, R. Smith, T. Smith, M. Steele, Taylor, Teague, L. Thomas, T. Thomas, Vess, W. Walker, weaver, White, Wilkins, Wilkinson, Womack, Wood, Booker, J. Lewellen**

**For An Act To Be Entitled**

**“AN ACT TO REGULATE STATE EMPLOYMENT OF CONSTITUTIONAL OFFICERS, AND THEIR SPOUSES; TO ESTABLISH PROCEDURES TO BE FOLLOWED BY CONSTITUTIONAL OFFICERS, AND THEIR SPOUSES, WHEN ENTERING INTO GRANTS, CONTRACTS, OR LEASES WITH THE STATE; AND FOR OTHER PURPOSES.”**

Subtitle

**“REGULATING STATE EMPLOYMENT OF CONSTITUTIONAL OFFICERS, AND THEIR SPOUSES; ESTABLISHES PROCEDURES REGARDING THEIR ENTERING INTO GRANTS, CONTRACTS OR LEASES WITH THE STATE.”**

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:**

**SECTION 1.**      For purposes of this act:

(a) “State agency” means every board, commission, department, division, institution, and other office of state government whether located within the legislative, executive, or judicial branch of government and including state supported colleges and universities.

(b) “Constitutional officer” means Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Attorney General, Commissioner of State Lands, Auditor of State, member of the Arkansas House of Representatives, and member of the Arkansas Senate.

**SECTION 2.**

(a) (1) Subject to any restrictions or conditions prescribed by the Arkansas Constitution, no person elected to a constitutional office may, after being elected to the constitutional office, and during the term for which elected, enter into employment with any state

agency or employment in any noncertified position with any public school district of this state, any vocational education school funded by the state, any education service cooperative, or the Cooperative Education Services Coordinating Council unless the constitutional officer resigns prior to entering into the employment.

(2) Subject to any restrictions or conditions prescribed by the Arkansas Constitution, any constitutional officer who was employed by a state agency prior to being elected a constitutional officer may continue such employment but the employment shall not thereafter be reclassified unless it is the result of a general reclassification affecting all positions of the class and grade equally nor shall the constitutional officer receive any pay increase for that employment other than the cost of living increases authorized by the General Assembly without the prior approval of the Joint Budget Committee during legislative sessions, the Legislative Council between legislative sessions, and the Governor.

(b) No person whose spouse is elected to a constitutional office may, after the spouse is elected to the constitutional office and during the term for which the spouse is elected, enter into employment with any state agency without the prior approval of the Joint Budget Committee during legislative sessions, or the Legislative Council between legislative sessions, and the Governor.

(c) This act does not prohibit the spouse of any constitutional officer from being elected and serving in an elected office or from being appointed to fill the vacancy in any elected office.

(d) Any person who was employed by a state agency prior to the person's spouse being elected a constitutional officer and any person who entered into employment with a state agency during the spouse's service as a constitutional officer is subject to the following:

(1) that position shall not thereafter be reclassified unless it is the result of a general reclassification affecting all positions of the class and grade equally nor shall that person, while the spouse services as a constitutional officer or within two (2) years after the spouse leaves office, be promoted or transferred without the prior approval of the joint Budget Committee during legislative sessions, or the Legislative Council between legislative sessions, and the Governor; and

(2) that person shall not receive any pay increase in excess of fifteen percent (15%) without the prior approval of the Joint Budget Committee during legislative sessions, or the Legislative Council between legislative sessions, and the Governor.

(e) Former members of the General Assembly and their spouses shall not be eligible to be employed by any state agency within twenty-four (24) months after the legislator leaves office in any job or position which:

(1) was newly created by legislative action within the twenty-four months prior to the legislator leaving office; or



(f) Grants, contracts and leases entered into prior to the person becoming a constitutional officer are not subject to this section, but renewals and extensions of those grants, contracts and leases are subject to the provisions of this section.

**SECTION 4.**

                    The Director of the Department of Finance and Administration is authorized to promulgate and implement any necessary rules, regulations or policies to insure compliance with this act subject to the prior review and approval of the Joint Budget Committee during legislative sessions and the Legislative Council between legislative sessions. All disclosure statements and other information required to be furnished by constitutional officers and their spouses shall be certified by the constitutional officer or spouse under penalty of perjury.

**SECTION 5.**

                    (a) Any willful and knowing violation of this act shall constitute a Class D felony.

                    (b) The violation of any rule, regulation or policy promulgated by the Department of Finance and Administration under this act or the failure of a constitutional officer or spouse of a constitutional officer to disclose his or her interest in any contract, grant or lease agreement or in any subcontract, subgrant, or assignment of lease as required herein or as required by any rule, regulation, or policy of the Department of Finance and Administration shall be grounds for voiding the contract, grant, lease agreement, subcontract, subgrant, or lease assignment and the constitutional officer or spouse may be required to refund any monies received thereunder.

**SECTION 6.**

                    The venue for the judicial proceedings for violating Section 5(a) shall be in the county of the defendant's domicile.

**SECTION 7.**

                    A person whose spouse is elected to a constitutional office may be employed by a state agency without the approval of the employment required by Section 2(b) if the person's entry salary does not exceed the amount prescribed by level 4 of grade 13 of the state pay plan found in Arkansas Code 21-5-209 as now or hereafter amended.

**SECTION 8.**

                    The Arkansas Ethics Commission is hereby authorized to investigate any complaints or allegations of violations of these provisions and to make findings thereon. In the investigation of such matters, the Commission is specifically given all authority and powers as granted to it under the provisions of Arkansas Code 7-6-217 and 7-6-218.

**SECTION 9.**

All provision of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and Arkansas Code Revision Commission shall incorporate the same in the Code.

**SECTION 10.**

If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

**SECTION 11.**

All laws and parts of laws in conflict with this act are hereby repealed.

**SECTION 12.**

EMERGENCY. It is hereby found and determined by the General Assembly that there is an immediate need to establish restrictions and procedures regarding constitutional officers becoming employees of the state or entering into grants, contracts or leases with the state; that this act established those restrictions and procedures; and that this act should go into effect as soon as possible to help restore the public confidence in state government. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.

**/s/ Beebe**

**APPROVED: 2/9/1999**

**ACT 1032 of 1999  
(Review of Grants)**

**State of Arkansas  
82<sup>nd</sup> General Assembly  
Regular Session, 1999  
House Bill 1870**

**By: Joint Budget Committee**

**For An Act To Be Entitled  
“AN ACT TO REQUIRE LEGISLATIVE COUNCIL, OR JOINT BUDGET  
COMMITTEE REVIEW OF DISCRETIONARY GARANTS AWARDED BY  
AGENCIES OF THE STATE; AND FOR OTHER PURPOSES.”**

**Subtitle  
“TO REQUIRE LEGISLATIVE COUNCIL OR JOINT BUDGET COMMITTEE  
REVIEW OF DISCRETIONARY GRANTS AWARDED BY AGENCIES OF THE  
STATE.”**

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STTE OF ARKANSAS:**

**SECTION 1.**

(a) For purposes of this act:

(1) State agency means:

(A) Every board, commission, department, division or office of state government  
whether executive, legislative or judicial; and

(B) All state supported post-secondary educational institutions, including but not  
limited to, colleges and universities, vocational and technical schools, and community colleges;

(2) “Discretionary grant” means a grant in which the recipient of the grant funds or the  
formula for the grant award is not specifically stated in the legislation authorizing the grant; and

(3) “Non-discretionary grant” means a grant in which the recipient of the grant funds or  
the formula for the grant award is specifically stated in the legislation authorizing the grant, or in  
specific agency regulations promulgated by the agency and reviewed by the Arkansas Legislative  
Council, or in the case of federal funds, in the statute, regulation, or other federal directive which  
restricts the disbursement of the funds according to federal guidelines.

(b) Hereafter, no state agency shall award any discretionary grant prior to review by the  
Arkansas Legislative Council between legislative sessions, or the Joint Budget Committee during  
legislative sessions. However, if a state agency determines that an emergency exists requiring  
the discretionary grant to be awarded prior to review, it may award the discretionary grant prior to  
the review by the Legislative Council or Joint Budget Committee, and shall immediately notify the  
Legislative Council between legislative sessions, or the Joint Budget Committee during legislative  
sessions, as to the facts constituting the emergency.

(c) Grants exempt from review shall include:

(1) Grants for which the total consideration is less than or equal to ten thousand dollars (\$10,000):

(2) Non-discretionary grants as determined by the agency:

(3) Grants to another governmental entity such as a state agency, public educational institution, federal governmental entity, or body of a local government:

(4) Disaster relief grants:

(5) Grants identified as not requiring review by the Legislative council between legislative sessions, or the Joint Budget Committee during legislative sessions:

(6) Grants containing confidential information, the disclosure of which is determined by the agency to constitute a violation of other provisions of law regarding disclosure:

(7) Any scholarship or financial assistance award to, or on behalf of, a postsecondary student.

## **SECTION 2.**

The Legislative Council between legislative sessions, and the Joint Budget Committee during legislative sessions, shall review all non-exempt discretionary grants by state agencies, and notify the agencies as to the results of the review. The Legislative Council or Joint Budget Committee shall notify agencies of any other grants identified as not requiring review.

## **SECTION 3.**

All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and Arkansas Code Revision Commission shall incorporate the same in the Code.

## **SECTION 4.**

If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

## **SECTION 5.**

All laws and parts of laws in conflict with this act are hereby repealed.

## **SECTION 6.**

It is hereby found and determined by the General Assembly that the provisions of this act are necessary to foster confidence in the operations of state government and to insure the proper expenditure of public funds and that this act should therefore go into effect as soon as possible. Therefore, an emergency it is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the

bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.

**/s/ Joint Budget Committee**

**APPROVED 4/1/1999**

**Act 1232 of 2001  
(Exemption for nursing services)**

State of Arkansas  
83<sup>rd</sup> General Assembly  
Regular Session, 2001  
HOUSE BILL 1729

By: Representative Goss

For An Act to be Entitled

**“AN ACT TO AUTHORIZE STATE EMPLOYEES TO DELIVER CERTAIN PROFESSIONAL OR CONSULTANT SERVICES TO THE STATE OF ARKANSAS PROVIDED THAT DELIVERY OF SUCH SERVICES COMPLIES WITH ALL APPLICABLE ETHICAL STANDARDS; AND FOR OTHER PURPOSES.”**

Subtitle

**“AN ACT TO AUTHORIZE STATE EMPLOYEES TO DELIVER CERTAIN PROFESSIONAL SERVICES OR CONSULTANT SERVICES TO THE STATE OF ARKANSAS PROVIDED THAT THE DELIVERY OF SUCH SERVICES COMPLIES WITH ALL APPLICABLE ETHICAL STANDARDS.”**

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:**

**SECTION 1.** Arkansas Code 19-4-1705 is amended to add an additional subsection to read as follows:

(c) The provisions of § 19-4-1701(2) shall not be applicable to nursing services purchased by the Department of Human Services so long as the services conform to all applicable federal laws and rules, and to the ethical standards contained in §§ 19-11-704 through 19-11-713.

APPROVED 4/2/2001

**ACT 1568 of 2001  
(Exemptions from Purchasing Law)**

**State of Arkansas  
83rd General Assembly  
Regular Session, 2001  
HOUSE BILL 2555**

**By: Representative W. Walker**

**For An Act To Be Entitled**

**“AN ACT TO EXEMPT THE PROVISION OF FOSTER CARE SERVICES FROM THE ARKANSAS PURCHASING LAW AND TO EXEMPT CERTAIN PROFESSIONAL SERVICES PROVIDED THOSE CONTRACTS AND SERVICE COMPANIES COMPLY WITH ALL APPLICABLE ETHICAL STANDARDS; AND FOR OTHER PURPOSES.”**

**Subtitle**

**“AN ACT TO EXEMPT THE PROVISION OF FOSTER CARE SERVICES FROM THE ARKANSAS PURCHASING LAW AND TO EXEMPT CERTAIN PROFESSIONAL SERVICES.”**

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:**

**SECTION 1.** Arkansas Code 19-11-203(14) is amended to add the following subdivision:

- (14) “Exempt commodities and services” means:
- (A) Advertising in newspapers, periodicals, and related publications, television, radio, and billboards;
  - (B) Animals procured for medical research;
  - (C) Commodities procured for resale in cafeterias, commissaries, bookstores, gift shops, canteens, and other similar establishments. However, such commodities procured shall not be sold or transferred to any agency with the intent of circumventing applicable procurement procedures;
  - (D) Commodities procured from nonprofit workshops in accordance with 19-11-501 – 19-11-504;
  - (E) Contracts awarded by agencies for the construction of buildings and facilities and for major repairs. These contract exemptions shall not extend to the procurement of any commodities not otherwise exempt, which are to be furnished by the agency under any such contract;
  - (F) Contracts awarded by the Arkansas State Highway and Transportation Department for the construction, reconstruction, and maintenance of roads and bridges in the state highway system and for the county, rural road aid, and city street aid programs;
  - (G) Contracts by institutions of higher learning for disposal of personal and consulting services and contracts with students;
  - (H) Farm products procured or sold by a state agency having an agency purchasing official. The current trade customs with respect to the procurement or sale of cotton, cotton seed, rice, and other farm products shall be followed when it is necessary to do so in order to obtain the best price for the commodities procured or sold;
  - (I) Fees, including medical fees and physician fees;
  - (J) Freight and storage charges and demurrage;
  - (K) Licenses;
  - (L) Livestock procured by an agency having an official experienced in selection and procurement of livestock. Such procurement will be reported to the State Purchasing Director, giving details of the purchase;
  - (M) Livestock procured for breeding, research, or experimental purposes;

- (N) Maintenance on office machines and technical equipment;
- (O) Medical items specifically requested by a physician for treatment or diagnosis of patients in his care, including prosthetic devices, surgical instruments, heart valves, pacemakers, radioisotopes, and catheters;
- (P) Membership in professional, trade, and other similar associations;
- (Q) Perishable foodstuffs for immediate use or processing;
- (R) Postage;
- (S) Published books, manuals, maps, periodicals, films, technical pamphlets, and copyrighted educational aids for use in libraries and for other informational or instructional purposes in instances in which other applicable law does not provide a restrictive means for the acquisition of them;
- (T) Services of visiting speakers, lecturers, and performing artists;
- (U) Taxes;
- (V) Travel expense items such as room and board and transportation charges;
- (W) Utility services or equipment which is defined, recognized, and regulated by the Arkansas Public Service Commission as a monopoly offering;
- (X) Works of art for museum and public display;
- (Y) Professional and consultant services procured in accordance with 19-4-101 et seq.; and
- (Z) Commodities and services for use in research, education, and treatment for the diagnosis, cure, and prevention of disease may be procured, with administrative approval, through a group purchasing entity serving other public health institutions when substantial savings are available. A report shall be filed annually with the Division of Legislative Audit reflecting the justification of and the estimated savings accruing due to the use of this exemption; and

(AA) Foster care maintenance services provided by foster family homes approved by the Division of Children & Family Services for children whose placement and care are the responsibility of the Division of Children & Family Services.

**SECTION 2.** Arkansas Code 19-4-1705, concerning exempt contracts, is amended to add the following subsection:

(c) The provisions of this subchapter do not apply to contracts created pursuant to federally approved state plans for services reimbursed under Title V or Title XIX of the federal Social Security Act, as it existed on January 1, 2001, provided that those contracts and services conform to all applicable federal laws and rules, and to the ethical standards beginning at 19-11-704.

## Arkansas Code Annotated

### 19-4-1709      **Standard contract forms.**

- (a)
  - (1) The Chief Fiscal Officer of the State shall prescribe standard forms to be utilized by all state agencies in the execution of each of the two (2) contracts described in this subchapter.
  - (2) The Chief Fiscal Officer of the State shall refuse to permit payment of any vouchers under any contract in which a standard form is not utilized or in which all information required by the standard form is not supplied.
- (b) The standard contract form shall include the following items plus such additional items as the Chief Fiscal Officer of the State shall deem desirable for the purposes of this subchapter:
  - (1) A section setting forth in reasonable detail the objectives and scope of the contractual agreement and the methods to be used to determine whether the objectives specified have been achieved;
  - (2) The rates of compensation, transportation, per diem, subsistence, out-of-pocket allowances, and all other items of costs contemplated to be paid the contractor by the agency;
  - (3) The method by which the rate of compensation and the total payment shall be calculated;
  - (4) The maximum number of dollars which the agency may be obligated to pay to the contractor under the terms of the contract, including all expenses and other items of costs, and the source of funding to be utilized;
  - (5) The term of the contract;
  - (6) The names and social security numbers of all individuals who will be supplying services to the agency or to third-party beneficiaries under the terms of the contracts, so far as those names are known to the contractor at the time of the execution of the contract. If the names of all individuals supplying services under the contract are not available at the time of the execution of the contract, the contract shall contain a provision requiring the contractor to submit periodically the names and social security numbers of individuals supplying services as soon as the identity of those individuals is known to the contractor;
  - (7) Where the contractor is a business entity, the federal identification number of the business entity shall be listed on the contract form;
  - (8) (A) A certification shall be included, signed by the contractor, as follows:

“I (name) , (title), certify under penalty of perjury that, to the best of my knowledge and belief, no regular full-time or part-time employee of any state agency of the State of Arkansas shall receive any personal, direct, or indirect monetary benefits which would be in violation of the law as a result of the execution of this contract.”
  - (B) For the purpose of this subdivision, it shall be understood that where the contractor is a widely held public corporation, the term “direct or indirect monetary benefit” shall not apply to any regular corporate dividends paid to a stockholder of the corporation who is also a state employee and who owns less than ten percent (10%) of the total outstanding stock of the contracting corporation;
  - (9) For any contract in which the total compensation exclusive of reimbursable expenses to be paid by the agency does not exceed five thousand dollars (\$5,000), a purchase order may be utilized in lieu of the standard form or forms prescribed by the Chief Fiscal Officer of the State. However, should the agency enter into a subsequent contract with the same individual or organization during the same fiscal year, regardless of the nature of the

contract, then the details of the original contract which utilized a purchase order form and of all subsequent contracts, regardless of amount or type, shall be promptly reported to the Chief Fiscal Officer of the State. This reporting shall be done to allow him to determine whether the agency is utilizing a series of contracts to avoid the use of the standard form and to avoid the application of appropriate regulations;

- (10) Standard contract forms in use by licensed practitioners such as architects and engineers may be used to supplement the standard contract forms; and
- (11) All contracts in which the services of architects or engineers are required for the construction, renovation, or repair of buildings, facilities, or lands owned or operated by the State of Arkansas shall contain the following clause:

“In the event the State of Arkansas fails to appropriate funds or make moneys available for any biennial period covered by the term of this contract for the services to be provided by the contractor, this contract shall be terminated on the last day of the last biennial period for which funds were appropriated or moneys made available for such purposes. This provision shall not be construed to abridge any other right of termination the agency may have.”

**History.** Acts 1973, No. 876, § 20; 1977, No. 875, § 1; 1979, No. 368, § 1; A.S.A. 1947, § 13-346; Acts 1989, No. 402, § 3; 1997, No. 1088, § 2.

Publisher notes – Amendments. The 1997 amendment substituted “five thousand dollars (\$5,000) “ for “one thousand dollars (\$1,000)” in (b)(9)

## Arkansas Code Annotated

### 19-4-1716 Development and use of performance based contracts

- (a) The General Assembly finds that in the absence of adequate attention to service quality, government programs often become wasteful, ineffective, and unresponsive; that evaluating the quality of service provided under state agency contracts for professional and consulting services is necessary to protect the integrity of state-funded programs; that the State Hospital Board and the Department of Human Services enter into many of these types of contracts that involve millions of dollars of public funds; that requiring the inclusion of a performance evaluation provision in professional service contracts and consulting services contracts entered into by the State Hospital Board and the Department of Human Services will provide a mechanism for evaluating the quality of service provided under those contracts, and that requiring the State Hospital Board and the Department of Human Services to report annually regarding performance evaluation to the House and Senate Interim Committees on Public Health, Welfare, and Labor or appropriate subcommittees thereof will encourage the State Hospital Board and the Department of Human Services to conduct thorough performance evaluations, which may provide information that can help improve the programs and services they provide. Therefore, it is declared to be the intent of this General Assembly to require the State Hospital Board and the Department of Human Services to include performance evaluation provisions in contracts for professional services and consulting services and to report at least annually regarding the evaluation of each contract.
- (b) All new professional services contracts and consultant services contracts entered into by the State Hospital Board and the Department of Human Services shall include a performance evaluation provision that outlines a method for evaluating the service provided under the contract. The provision shall identify the goals and performance indicators of the contract and how the state agency intends to evaluate the service provided.
- (c) The State Hospital Board and the Department of Human Services shall actively seek appropriate remedy when contract performance is less than satisfactory.
- (d) The State Hospital Board and the Department of Human Services shall report to the House and Senate Interim Committees on Public Health, Welfare, and Labor or appropriate subcommittees thereof at least annually regarding the performance evaluation of each professional services contract and each consulting services contract. The House and Senate Interim Committees on Public Health, Welfare, and Labor or appropriate subcommittees thereof may refer contracts related to the Division of Youth Services of the Department of Human Services to the Senate Interim Committee on Children and Youth.
- (e) The State Hospital Board and the Department of Human Services shall not extend or renew an existing professional services contract or consultant services contract unless the contract includes a provision for performance evaluation.
- (f) This section shall only apply to contracts required to be submitted under **19-4-1710** and shall not apply to architectural and engineering services contracts
- (g) The House and Senate Interim Committees on Public Health, Welfare, and Labor or appropriate subcommittees thereof shall report to the other interim committees and to the General Assembly on the success of including performance evaluation provisions in professional services and consultant services contracts with regard to the legislative intent of this section and make recommendations with regard to the expansion, continuation, or termination of the use of performance evaluation provisions in professional services and consultant services contracts.

**History.** Acts 1993, No. 1255, §§ 1-3; 1997, No. 179, § 17; 1997, No. 312, § 14; 1997, No. 1354, § 37.

## Arkansas Code Annotated

### 19-4-2201 Definitions – Review generally – Exempt grants

- (a) For the purposes of this subchapter:
- (1) “Discretionary grant” means a grant in which the recipient of the grant funds or the formula for the grant award is not specifically stated in the legislation authorizing the grant;
  - (2) “Nondiscretionary grant” means a grant in which the recipient of the grant funds or the formula for the grant award is specifically stated in the legislation authorizing the grant, or in specific agency regulations promulgated by the agency and reviewed by the Legislative Council, or in the case of federal funds, in the statute, regulation, or other federal directive which restricts the disbursement of the funds according to federal guidelines; and
  - (3) “State agency” means:
    - (A) Every board, commission, department, division, or office of state government whether executive, legislative, or judicial; and
    - (B) All state-supported post-secondary education institutions, including, but not limited to, colleges and universities, vocational and technical schools, and community colleges.
- (b) Hereafter, no state agency shall award any discretionary grant prior to review by the Legislative Council between legislative sessions, or by the Joint Budget Committee during legislative sessions. However, if a state agency determines that an emergency exists requiring the discretionary grant to be awarded prior to review, it may award the discretionary grant prior to the review by the Legislative Council or the Joint Budget Committee, and shall immediately notify the Legislative Council between legislative sessions, or the Joint Budget Committee during legislative sessions, as to the facts constituting the emergency.
- (c) Grants exempt from review shall include:
- (1) Grants for which the total consideration is less than or equal to ten thousand dollars (\$10,000);
  - (2) Nondiscretionary grants as determined by the agency;
  - (3) Grants to another governmental entity such as a state agency, public educational institution, federal governmental entity, or body of a local government;
  - (4) Disaster relief grants;
  - (5) Grants identified as not requiring review by the Legislative Council between legislative sessions, or the Joint Budget Committee during legislative sessions;
  - (6) Grants containing confidential information, the disclosure of which is determined by the agency to constitute a violation of other provisions of law regarding disclosure; and
  - (7) Any scholarship or financial assistance award to, or on behalf of, a post-secondary student.

**History.** Acts 1999, No. 1032, § 1.

## Arkansas Code Annotated

### **19-4-2202**      **Review of non-exempt grants**

The Legislative Council between legislative sessions, and Joint Budget Committee during legislative sessions, shall review all nonexempt discretionary grants by state agencies, and notify the agencies as to the results of the review. The Legislative Council or the Joint Budget Committee shall notify agencies of any other grants identified as not requiring review.

**History.** Acts 1999, No. 1032, § 2.

## Arkansas Code Annotated

### 19-11-245 Debarment or suspension

- (a) **Applicability.** This section applies to debarment for cause from consideration for award of contracts, or a suspension from such consideration during an investigation, where there is probable cause for such a debarment.
- (b) **Authority.** After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the State Purchasing Director or the head of a purchasing agency shall have authority to debar a person for cause from consideration for award of contracts, provided that doing so is in the best interests of the state. The debarment shall not be for a period of more than three (3) years. The same officer shall have authority to suspend a person from consideration for award of contracts, provided that doing so is in the best interests of the state and there is probable cause for debarment. The suspension shall not be for a period exceeding three (3) months. The authority to debar or suspend shall be exercised in accordance with regulations promulgated by the director.
- (c) **Causes for Debarment or Suspension.** The causes for debarment or suspension because of unsuitability for award of a contract shall be set forth in regulations promulgated by the director.
- (d) **Decision.** The director or the head of a purchasing agency shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken.
- (e) **Notice of Decision.** A copy of the decision under subsection (d) of this section shall be mailed or otherwise furnished within five (5) days after it is written to the debarred or suspended person and any other party intervening.
- (f) **Finality of Decision.** A decision under subsection (d) of this section shall be final and conclusive.

**History.** Acts 1979, No. 482, § 58; A.S.A. 1947, § 14-277; 2001, No. 1237, § 35.

## Arkansas Code Annotated

### **20-76-212 Reimbursement rate to providers – Medicaid program.**

Notwithstanding any other provision in federal law or departmental commitment which may exist to the contrary, the Department of Human Services shall not increase any reimbursement rate to any provider or provider groups supported in whole or in part by funds administered by the Department of Human Services, nor shall it adopt any other rule, regulation or amendment to the Arkansas State Medicaid program that would result in an obligation of the general revenues of the state without first seeking and receiving the approval of the Governor and the Chief Fiscal Officer of the State.

**History.** Acts 1992 (2nd Ex. Sess.), No. 3, § 3.

## Arkansas Code Annotated

### **20-77-110 Increase in reimbursement rate**

Notwithstanding any other provision in federal law or departmental commitment which may exist to the contrary, the Department of Human Services shall not increase any reimbursement rate to any provider or provider groups supported in whole or in part by funds administered by the Department of Human Services, nor shall it adopt any other rule, regulation, or amendment to the Arkansas medicaid program that would result in an obligation of the general revenues of the state without first seeking and receiving the approval of the Governor and the Chief Fiscal Officer of the State.

**History.** Acts 1993, No. 1239, § 73.

## Arkansas Code Annotated

### **25-20-104 Agreements for joint or cooperative action – Authority to make - Requirements generally**

- (a) Any governmental powers, privileges, or authority exercised or capable of exercise by a public agency of this state alone may be exercised and enjoyed jointly with any other public agency of this state which has the same powers, privileges, or authority under the law and jointly with any public agency of any other state of the United States, which has the same powers, privileges, or authority, but only to the extent that laws of the other state or of the United States permit the joint exercise or enjoyment.
- (b) Any two (2) or more public agencies may enter into agreements with one another for joint cooperative action pursuant to the provisions of this chapter. Appropriate action by ordinance, resolution, or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before the agreement may enter into force.
- (c) Any agreement for joint or cooperative action shall specify the following:
  - (1) Its duration;
  - (2) The precise organization, composition, and nature of any separate legal or administrative entity created thereby, together with the powers delegated to it, provided the entity may be legally created;
  - (3) Its purpose;
  - (4) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor;
  - (5) The permissible methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon the partial or complete termination;
  - (6) Any other necessary and proper matters.
- (d) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, in addition to the items enumerated in subdivisions (c) (1) and (c) (3) – (6) of this section, the agreement shall contain the following:
  - (1) Provisions for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, public agencies party to the agreement shall be represented;
  - (2) The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking.
- (e) No agreement made pursuant to this chapter shall relieve any public agency of any obligation or responsibility imposed upon it by law except that, to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made hereunder, performance may be offered in satisfaction of the obligation or responsibility.

- (f)
  - (1) Every agreement made under this section prior to, and as a condition precedent to, its entry into force shall be submitted to the Attorney General, who shall determine whether the agreement is in proper form and compatible with the laws of this state.
  - (2) The Attorney General shall approve any agreement submitted to him or her under this section unless he or she shall find that it does not meet the conditions set forth in this section and shall detail, in writing addressed to the governing bodies of the public agencies concerned, the specific respects in which the proposed agreement fails to meet the requirements of law.
  - (3) Failure to disapprove an agreement submitted hereunder within sixty (60) days of its submission shall constitute approval thereof.
- (g) Financing of joint projects by agreement shall be as provided by law.
- (h) In addition to other specific grants of authority as provided in the Arkansas Constitution and statutes and in addition to the formal cooperation authorized by this chapter, cities, towns, counties, and other units of government are authorized to associate and cooperate with one another on an informal basis without complying with the detailed procedure set out above.
- (i) In addition to the legal or administrative entities which may otherwise be legally created under Arkansas statutes, public agencies may create a separate legal entity in the form of a public body corporate and politic pursuant to 25-20-201 et seq. for the purpose of constructing, operating, and maintaining a public library system, or 25-20-301 et seq. for the purpose of constructing owning, operating, financing, and maintaining a consolidated waterworks system.

**History.** Acts 1967, No. 430, § 4; 1979, No. 52, § 1; A.S.A. 1947, § 14-904; Acts 1995, No. 813, § 1; 2001, No. 982, § 2.

PROCUREMENT REGULATIONS  
PART II  
CHAPTER 10  
PROFESSIONAL AND CONSULTANT  
SERVICES CONTRACT

As used in this part, the term "State agencies" shall include all departments, agencies, boards, commissions, and institutions of higher education of the State of Arkansas, other than the Arkansas State Highway and Transportation Department and contracts covered by the Federal Highway Administration, or wherein the cost and fee are established by competitive bidding. The term "Contractor" shall refer to any person or organization which executes a contract with a state agency under which "Consultant Services" to said state agency or agencies, and the individuals performing the services are not state employees occupying regular full-time or part-time or extra help positions provided by law; except as provided for by Arkansas Code 19-4-1701.

A professional services contract between a state agency and a contractor is a contract in which the relationship between the contractor and the state agency is that of an independent contractor, rather than that of an employee. The services to be rendered consist of the personal services of an individual or individuals which are professional in nature. Under such contracts, the agency does not have direct managerial control over the day-to-day activities of the individual or individuals providing the services, and the contract will specify the results expected from the rendering of the services rather than detailing the manner in which services shall be rendered. Any contract under which the state agency retains day-to-day managerial control over the person or persons performing the services and in which the relationship between the contractor and agency is that of an employer and employee is not a professional services contract, is illegal, and expressly prohibited. Services rendered under a professional services contract may be rendered to the agency itself or to a third party beneficiary. However, the Department of Information Systems is authorized to employ persons over which they exercise day-to-day managerial control as specified under Arkansas Code 25-4-112, for which such services as a professional services contract may be utilized.

A consultant services contract is a contract between a state agency and an individual or organization in which the service to be rendered to the state agency or to a third party beneficiary under the contract is primarily the giving of advice by the contractor on a particular problem or problems facing the agency or the third party beneficiary. The contractor shall have the relationship of an independent contractor with respect to the state agency. The state agency shall not exercise managerial control over the day-to-day activities of the contractor, but the contract shall specify the results expected from the services to be rendered by the contractor and the advice or assistance to be provided.

The principal purpose of a professional services contract or a consultant services contract shall be the procurement of the services of an individual or individuals by the state agency, rather than the procurement of commodities.

Service contracts (Example: elevator service, janitorial service, pest control services, etc.) shall be governed by Arkansas Code 19-4-816, which requires each agency to keep a copy of such contracts on file.

No contract for procurement of professional services and consultant services may be entered into which requires the services of one or more individuals on a regular full-time or part-time work week basis for longer than one year. Provided, however, that in the unusual event that the best interest of the State would be served by a contract which exceeds one year, the Chief Fiscal Officer may approve such contract, having first received the review of the Legislative Council or the Joint Budget Committee. Provided further, that in no event shall any contract be entered into that would contemplate that payments under such contract be made beyond the expiration of the current biennial period, unless the General Assembly, prior to the expiration of the current biennial period, makes an appropriation for such purpose. Professional and consultant service contracts shall include a non-appropriation clause which specifies that in the event the State of Arkansas fails to appropriate funds or make monies available for any biennial period covered by the term of the contract for the services to be provided by the contractor, the contract shall be terminated on the last day of the last biennial period for which funds were appropriated or monies made available for such purpose.

Standard contract forms in use by licensed practitioners such as architects and engineers may be used to supplement the standard contract form but must be listed as attachment(s).

Procurement of Professional and Consultant Services is to be accomplished as follows:

1. Obtain copies of the approved Office of State Procurement Professional /Consultant Services standard contract form and PCS-D, (Contract and Grant Disclosure and Certification form) and letter from the Office of the Attorney General when attorneys are retained.
2. Complete the Professional/Consultant Services Form for each contract. Except for those agencies exempt from State Building Services review, contracts subject to SBS prior approval shall also include the SBS Contract Justification Form.
3. For any contract in which the total compensation exclusive of reimbursable expenses to be paid by the state agency does not exceed five thousand dollars (\$5,000.00), a purchase order may be utilized in lieu of the standard contract form; provided that, should the agency enter into a subsequent contract or contracts with the same contractor during the same fiscal year, regardless of the nature of said contract or contracts, the details of the original contract which

utilized a purchase order form and all subsequent contracts, regardless of amount or type, shall be promptly reported to the Chief Fiscal Officer of the State.

4. One of the following methods should be utilized to receive and evaluate offers for professional and consultant services. The Office of State Procurement maintains a listing of professionals and consultants desiring to do business with the state.
  - a. SBS Criteria: The guidelines and procedures established by the Arkansas State Building Services shall be used by all agencies, except those exempt from SBS review, in selecting architects, land surveyors and engineers for state construction projects. Refer to Architectural Section 6-100 of SBS Standards and Criteria - Professional Services Selection Procedures for State Agencies.
  - b. Competitive Bid: A bid is a quotation from a respondent of his bid amount, duration of engagement, qualifications, and acceptance of responsibility to achieve the results as defined in a request for bids. This method is preferred when the agency is able to define in detail the specific project objectives, methods, results and desired qualifications. When using this method the agency should intend to award the contract to the qualified respondent submitting the lowest bid amount. A minimum of three (3) bids should be solicited, or documentation should be furnished as to why three (3) were not received. Only firms that offer the type of service required shall be contacted.
  - c. Request for Proposal (RFP): The RFP should include a complete description of the problem and/or circumstances as perceived by the agency, and any special requirements of the agency such as time limitations and should be submitted to several recognized experts. When the RFP is used, the agency should intend to select the respondent proposing the most effective solution for the price quoted. Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements, and to obtain best and final offers.
  - d. Request for Qualifications (RFQ): The Request for Qualifications is, in the absence of sole source justification, the procurement method required when contracting for architectural, engineering, land surveying and legal services. It may also be used, with prior approval from the Office of State Procurement, as the selection method for other P&CS contracts when it is determined to be the most suitable method of contracting. The RFQ is sent to those vendors whose work resume' indicates they are best suited to perform the work specified. Notification to architects, engineers, and land surveyors shall be in accordance with State Building Services' selection criteria. The agency makes its initial selection based upon the respondent's qualifications. Only after the most

qualified respondent is identified does cost become a factor in determining the award. Discussions may be conducted with responsible offerors who based upon qualifications submitted are determined to be reasonably susceptible of being selected for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements, and to obtain best and final offers.

- e. Professional and Consultant Services Exempt by Law: Although exempt from the competitive bidding process, the contracting for “professional services” for legal, architectural, engineering and land surveying will be conducted in accordance with § 19-11-801, which directs, “that the state shall negotiate contracts for professional services on the basis of demonstrated competence and qualifications for the type of services required and at fair and reasonable prices.” By regulation, contracting for the above referenced exempt professional services will be made utilizing the Request for Qualifications contracting method.
  
- f. Sole Source: The "single source" should only be used when all other methods of contracting are clearly not applicable. The agency chief fiscal officer or equivalent or director, division director or deputy director of an agency, college or university may authorize the use of sole source purchases. Sole source professional and consultant service contracts, except for those exempt by law; those for performing artists and lecturers, and those that are documented by sole source justification, may only be awarded after legal public notice of intent has been published in a newspaper of statewide circulation. The notice must clearly state the nature of the contract, the contracting agency, and the deadline by which interested providers must respond. Notification must also be posted on the agency or Office of State Procurement website.
  
- g. Sole Source Justification: Sole source professional and consultant service contracts, except for those exempt by law; those for performing artists and lecturers, and those that are published in a newspaper of statewide circulation, must be accompanied by written justification. The justification must clearly demonstrate that to contract otherwise would not be in the best interests of the state. The justification must fully address:
  - why the service is needed;
  - the methods used to determine that a lack of responsible/responsive competition exists for the service;
  - how it was determined that the provider possesses exclusive capabilities;
  - why the service is unique;
  - whether or not there are patent or proprietary rights which make the required service unavailable from other sources;
  - what the agency would do if the provider/service were no longer available, and

- any program considerations which make the use of a “Sole Source” critical to the successful completion of the agency’s task.
- h. Emergency Contracting: The agency chief fiscal officer or equivalent or director, division director or deputy director of an agency, college or university may institute a request for emergency action review of a professional or consultant service contract by providing in writing a request to the Director of State Procurement. The request must detail that to procure using other methods would endanger human life or health, state property or the functional capacity of the agency. The State Procurement Director may then approve submission of the contract to the Legislative Council. Under its emergency action procedures, the Co-chairpersons of the Legislative Council and/or the Co-chairpersons of the Legislative Council Review Committee may review P&CS contracts on behalf of the Legislative Council, provided a written report of the review process is presented to the Legislative Council at its next regular meeting. (This regulation implements Arkansas Legislative Council Rule # 19).
5. All sections of the contract form **must** be completed with the following items emphasized:
- a. Indicate whether this is a Professional or Consultant Services Contract.
  - b. Enter the agency assigned contract number and amendment number. This number must be utilized when inquiring as to the status of an approved contract and entered on all vouchers submitted for payment to the contractor. All amendments must have a copy of the original contract and any previous amendments attached. For those contracts for which payment will be made wholly or in part against a Method of Financing, enter the assigned Method of Financing on the contract form.
  - c. Enter the date the agreement was signed by the agency and the contractor, the purchase order information and the vendor number. Also enter the agency's code and title, division, if applicable, and the contractor's Federal ID number or social security number, name and address.
  - d. State the objectives and scope clearly and concisely so that the contractor's performance can be effectively evaluated at any time to assure evaluation of satisfactory achievement toward attainment of the contract agreement. Any written data, procedures, forms, survey results, etc., expected to be supplied by the contractor should be enumerated. If the contract is part of a larger plan, this should also be noted. Use attachments as required.
  - e. State the compensation clearly, and indicate if various levels of expertise are to be supplied by the contractor, a rate for each level and the number of personnel within each level should be listed. Calculate and extend

totals. A schedule of allowable reimbursable expenses and estimated rates for each item of expense should be agreed to. Enter items, rates by items, and extend the total by item column. Finally, enter total of compensation inclusive of reimbursable expenses.

- f. Check box(s) indicating funding source: State, Federal, Cash, Trust or Other (specify). Also, indicate the percentage of Federal and/or State funds when applicable.

Enter source of funds (fund code, business areas, fund center, commitment item, and grantor agency of federal grants funds) to be utilized for payment of the contract. (NOTE: The source of cash (bank) funds must be specifically stated - such as: tuition, fees, federal funds, etc.).

- g. Indicate the schedule of payments agreed to, to include any method(s) that might be utilized to evaluate performance of the criteria enumerated in the objectives and scope section of the contract as a condition of rendering payment to the contractor.

- h. Enter the beginning and ending date of the contract. The beginning date of all contracts shall be defined as the date upon which performance of the services to be rendered under the contract are to begin and not the date upon which the agreement was made. This date should be arrived at with emphasis placed on the following:

(1) any contract that requires review by the Legislative Council Committee must be submitted to the Department of Finance and Administration, Office of State Procurement, no less than ten (10) working days prior to the Committee meeting. Those requiring Sole Source Justification approval must be submitted at least fifteen (15) days prior to the published review date of the Legislative Council Review Committee. The beginning date of the contract must not precede the date of the Arkansas Legislative Council meeting in which such contract is to be reviewed. The Review Committee meets on the first Wednesday of each month, and the Legislative Council meets the third Friday of each month except when the General Assembly is in session, at which time Joint Budget will review contracts. The Legislative Council or the Joint Budget Committee shall provide the Chief Fiscal Officer with their review as to the propriety of the contract within thirty (30) days of said submission;

(2) all contracts, unless specifically excepted, must be filed with the Department of Finance and Administration and/or the Office of Construction of Arkansas State Building Services no fewer than five (5) working days prior to the starting date of such contracts.

- i. List any resources to be provided by the agency to the contractor as part of the agreement.

- j. Provide the name of the agency representative who will represent the agency in coordinating the work of the contractor.
- k. List the name, address, social security number and relationship of those persons who will be supplying services to the state agency insofar as they are known at the time the contract is signed. If the names are not known at the time of the execution of the contract, the contractor shall submit the names along with the other information as they become known. Such persons shall, for all purposes, be employees or independent contractors operating under the control of the contractor (sub-contractors), and nothing herein shall be construed to create an employment relationship between the agencies and the persons listed.
- l. Insure that on any contract or amendment to a contract executed by an agency, which exceeds the dollar limit established by Executive Order 98-04, the contractor discloses all information as required under the terms of Executive Order 98-04 and the Regulation pursuant thereto. The contractor shall also require the subcontractor to disclose the same information. The Contract and Grant Disclosure and Certification Form (Form PCS-D, Attachment II - 10.3) shall be used for this purpose.

No contract for services greater than the dollar limit established by Executive Order 98-04, shall be awarded, extended, amended, or renewed by any agency to any contractor who has not disclosed as required in Executive Order 98-04.

Contracts with another government entity such as a state agency, public education institution, federal government entity, or body of a local government are exempt from disclosure requirements.

The failure of any person or entity to disclose as required under any term of Executive Order 98-04, or the violation of any rule, regulation or policy promulgated by the Department of Finance and Administration pursuant to this Order, shall be considered a material breach of the terms of the contract, lease, purchase agreement, or grant and shall subject the party failing to disclose or in violation to all legal remedies available to the agency under the provisions of existing law.

- m. Be advised that although the contract form is signed by both the agency and contractor, it is not binding until reviewed by the Legislative Council or Joint Budget Committee, if required, and approved by the Department of Finance and Administration.

The head of the agency shall certify by his/her signature on each contract entered into by that agency that:

- (1) All information required by law and by regulations is supplied;
- (2) The proper contracting form is utilized;
- (3) All information contained in the contract is true and correct to the best of his/her knowledge and belief;

- (4) All general guidelines prescribed by the Chief Fiscal Officer of the State and all specific regulations of the state agency governing such contracts have been complied with;
- (5) The services proposed to be provided under the contract are necessary for the operation of the State agency in fulfilling its legal responsibilities and cannot be provided by an existing State agency or institution;
- (6) The Contractor is fully qualified to perform the services and has no vested interest in the subject matter of the contract which would constitute a conflict of interest and a bar to his providing services of a professional and disinterested quality;
- (7) The contract terms are reasonable and the benefits to be derived sufficient to warrant the expenditure of the funds called for in the contract.
- (8) No obligations will be incurred by a state agency unless sufficient funds are available to pay the obligations when they become due.

6. Procedures for Approval of Architects, Engineers and Land Surveyor Contracts

With the exception of those agencies exempt from State Building Services review, all contracts for architectural, engineering and land surveyor services must be first submitted to Arkansas State Building Services for their recommendation and approval as to the propriety and legality of the contract. Agencies shall submit contracts to SBS seven (7) working days prior to the deadline for submittal to DF&A. After receiving the recommendation and approval of Arkansas State Building Services, the contract shall be submitted to the Office of State Procurement of the Department of Finance and Administration. No contract requiring SBS review shall be submitted to the Office of State Procurement without first seeking the recommendation and approval of Arkansas State Building Services.

In the event Arkansas State Building Services refuses to give a favorable recommendation to the propriety of the contract, the agency involved may request the Legislative Council to review the decision of Arkansas State Building Services. The Legislative Council may then request Arkansas State Building Services to review their previous decision, abide by the decision of Arkansas State Building Services, or request the agency to make changes in the contract.

In no event shall Arkansas State Building Services have the final authority to deny a contract solely on the basis of its propriety.

7. Procedures for Approval of Data Processing or Telecommunications Planning or Services

All contracts for data processing, management systems, or telecommunications equipment planning or services must be submitted first to the State Executive Chief Information Officer for recommendation and approval. After receiving the recommendation and approval of the State Executive Chief Information Officer, the contract shall be submitted to the Office of State Procurement of the Department of Finance and Administration. No contract shall be submitted to the Office of State Procurement without first seeking the recommendation and approval of the State Executive Chief Information Officer.

Contracts for projects with an estimated value of \$25,000 or more involving the planning and installation of cabling or other capital improvements shall be submitted to SBS for review and approval prior to forwarding to the Office of State Procurement. See paragraph 6 for submittal of SBS contracts.

If the State Executive Chief Information Officer refuses to give favorable recommendation, the agency may appeal in writing to the Governor whose decision is final as provided under Arkansas Code 25-4-115.

8. Contracts Requiring Review of the Legislative Council or Joint Budget Committees

APPROVAL PROCEDURES:

- a. Any contract for professional or consultant services requiring the services of an individual or individuals for regular full-time or part-time weekly work where the total compensation exceeds ten thousand dollars (\$10,000.00), must be presented to the Legislative Council or the Joint Budget Committee by the Department of Finance and Administration prior to the execution date of such contract. The Legislative Council or the Joint Budget Committee shall provide the Chief Fiscal Officer of the State with their review as to the propriety of the contract within thirty (30) days of said submission. Such contracts shall not be submitted to the Legislative Council or the Joint Budget Committee until the Department of Finance and Administration has received said contract and provided the Legislative Council or the Joint Budget Committee with a recommendation as to the legality of such contract. NOTE: The Legislative Council or Joint Budget Committee may review or exempt from review any contract or group of contracts contemplated by Arkansas Code 19-4-1710, Section (3)(B).
- b. Contracts between state agencies where the total compensation exceeds ten thousand dollars (\$10,000.00), must be presented to the Performance Evaluation and Expenditure Review Committee (PEER) or Joint Budget Committee by the Department of Finance and Administration prior to the execution date of such contract.
- c. Amendments to contracts that were originally reviewed by Legislative Council or Joint Budget Committee: An amendment will require review by Legislative Council or Joint Budget Committee prior to approval by the Department of Finance and Administration if the original contract was reviewed by Legislative Council or Joint Budget Committee and the amendment increases the dollar amount and/or involves major changes in the objectives and scope of the contract.
- d. Amendments to contracts that originally did not require review by Legislative Council or Joint Budget Committee: An amendment which increases the total compensation to exceed the sum of \$25,000, shall require review by the Legislative Council or Joint Budget Committee, prior to the approval of the Department of Finance and Administration and before the execution date of the amendment. Any amendment changing the total dollar amount of a contract; the term of that contract, or any substantive specifications to a contract must be submitted for

review, along with a copy of the original contract and any attachments thereto. **Contracts which have expired cannot be amended.**

An agency representative should be present at the meeting.

It is the responsibility of the requesting agency to provide the contractor with an approved copy of the contract and related documentation.

9. Contracts Requiring Approval by the Department of Finance and Administration Only

Those contracts for professional and consultant services not defined in Section 8 as requiring review of the Legislative Council or Joint Budget Committee, excluding those of the Arkansas State Highway and Transportation Department cited in that section, require prior approval ONLY of the Department of Finance and Administration. These include, but are not limited to, professional or consultant services contracts for grants between state agencies and local governmental units that are funded primarily by Federal funds, whereby the monies expended are pass through grants and do not directly affect the state agency.

10. The requesting agency shall submit the original and two (2) copies each of the contract and attachments thereto, to the Office of State Procurement; however, those contracts for architectural, engineering and land surveyor services require an original and three (3) copies and shall first be submitted to Arkansas State Building Services. The approved original will be returned to the agency; a copy filed in the Office of State Procurement; and, if necessary, a copy returned to Arkansas State Building Services.
11. In addition to the information supplied on the Contract, the Chief Fiscal Officer of the State may make whatever additional inquiry he deems necessary and may require the supplying of additional information should he have reason to believe that the contract should be rejected because it does not comply with the provisions contained herein. It shall be the duty of the Chief Fiscal Officer of the State to return as "disapproved" to the contracting state agency any contract which fails to comply with the applicable laws and regulations governing said contract, and to approve any contract which does comply with the provisions contained herein.
12. The Chief Fiscal Officer shall immediately report to the Legislative Council or the Joint Budget Committee the disapproval of any contracts or payments thereunder, and the reason therefore. The state agency involved may then request hearing before the Legislative Council or the Joint Budget Committee. The Legislative Council or the Joint Budget committee upon a hearing of the fact may:
  - a. request the state agency to make certain changes in the contract involved;
  - b. request the Chief Fiscal Officer of the State reconsider his previous disapproval of said contract or payment; or
  - c. notify the state agency that it concurs in the decision of the Chief Fiscal Officer of the State.

The Chief Fiscal Officer of the State shall have final and ultimate authority over the supervision and approval of all contracts described in this Section. Provided that the Chief Fiscal Officer of the State shall seek and receive the review of the Legislative Council before approving or disapproving any contract or class or group of contracts authorized under the provisions of this Act, unless the Legislative Council or Joint Budget Committee specifically exempts the contract or class or group of contracts by formal committee action.

**STATE OF ARKANSAS  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
OFFICE OF ACCOUNTING**

**RULES AND REGULATIONS  
IMPLEMENTING GOVERNOR'S EXECUTIVE ORDER 98-04  
AND ACT 34 OF 1999**

Pursuant to the authority vested in the Department of Finance and Administration by Ark. Code Ann. 19-11-217, 19-11-715, 21-5-207, and 25-8-102, and by Act 34 of the 1999 Acts of the Arkansas General Assembly, and in the Chief Fiscal Officer of the State of Ark. Code Ann 19-4-104, and by the promulgation of Executive Order 98-04, and in compliance with Ark. Code Ann. 25-15-204 and Ark. Code Ann. 10-3-309, the Director of the Department of Finance and Administration, with the approval of the Governor, does hereby promulgate the following rules and regulations for the enforcement and administration of Executive Order 98-04 and of Act 34 of the 1999 Acts of the Arkansas General Assembly, to take effect as amended, on January 1, 2001.

1. **DEFINITIONS** – For purposes of these regulations, unless otherwise required by the context, the following definitions apply:
  - A. **AGENCY** or **STATE AGENCY** shall mean every agency, board, commission, department, division, institution, and other office of state government located within the executive branch of government and under the control of the Governor, for purposes of Executive Order 98-04. For purposes of Act 34 of 1999, State Agency is defined to also include an office of state government located within the legislative and judicial branches of government. Agency shall also include state-supported colleges and universities.
  - B. **BOARD OR COMMISSION MEMBER** shall mean any person who is an appointed member of a state board or commission, whether appointed by a member of the legislative, executive, or judicial branches of government, or otherwise.
  - C. **COMPETITIVE SEALED BID** shall mean a method of procurement in which the purchase price exceeds ten thousand dollars (\$10,000). It requires issuance of an Invitation to Bid, public notice, public opening at a pre-designated time and place, and award to the lowest responsive and responsible bidder.
  - D. **CONSTITUTIONAL OFFICER** shall mean Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Attorney General, Commissioner of State Lands, and Auditor of State, for purposes of Executive Order 98-04. For purposes of Act 34 of 1999, “constitutional officer” shall include, in addition to the foregoing, members of the Arkansas House of Representatives and members of the Arkansas Senate. For purposes of clarity, when the Regulations refer to “constitutional officer” the intent is to refer only to Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Attorney General, Commissioner of State Lands, and Auditor of State. When the intent is to also include members of the General Assembly, the Regulation shall state “constitution officer, including members of the General Assembly.”
  - E. **CONTRACT** shall mean any agreement entered into by and between a state agency and an individual or entity pursuant to which the agency agrees to purchase or lease tangible personal property, real property, or services, or any agreement for the disposal of commodities and services. Contract includes, but is not limited to, awards and notices of award; contracts of a fixed price, cost or incentive type; contracts providing for the issuance of job or task orders, leases,

lease purchase agreements, letter contracts, purchase orders, and professional or consultant services contracts. Contract also includes supplemental agreements with respect to any of these categories.

- F. CONTRACT LABOR shall mean temporary personnel hired through a private employment agency to meet unanticipated staffing needs. The duration of these assignments cannot exceed six (6) consecutive weeks per calendar quarter. Expenses for these services are paid from the agency/institution maintenance and operations budget. Temporary personnel hired in this manner are not state employees.
- G. CONTRACTOR shall mean any individual or entity that enters into a contract with a state agency.
- H. ENTITY shall mean any type of business organization other than an individual, including, but not limited to, a corporation, partnership, limited liability company, or joint venture.
- I. FORMER BOARD OR COMMISSION MEMBER shall mean any person who was a board or commission member within two years prior to entering into any contract with a state agency.
- J. FORMER CONSTITUTIONAL OFFICER shall mean any person who was a Constitutional Officer within two years prior to entering into any contract with a state agency.
- K. FORMER MEMBER OF THE GENERAL ASSEMBLY shall mean any person who was a member of the General Assembly within two years prior to entering into any contract with a state agency.
- L. FORMER STATE EMPLOYEE shall mean any person who was a state employee of any state agency within two years prior to entering into any contract with a state agency.
- M. GRANTS shall mean all appropriations made by the General Assembly from state, federal, or other moneys for educational assistance, welfare grants, rehabilitation services, aid to counties and municipalities, and to all other special appropriations which have for their purpose the appropriating of state, federal, or other moneys for public benefits; provided, however, grants shall not include scholarships to institutions of higher education. For purposes of these Regulations, a discretionary grant is a grant in which the recipient of the grant funds or the formula for the grant award is not specifically stated in the legislation authorizing the grant.
- N. IMMEDIATE FAMILY MEMBER shall mean an individual's spouse, children of that individual or his or her spouse, and brothers, sisters, or parents of the individual or his or her spouse.
- O. INDIVIDUAL shall mean one particular person.
- P. JOB CREATED OR ENHANCED BY LEGISLATION shall mean any regular salary or extra-help position created by legislation or any position previously created by legislation for which the salary was increased in excess of fifteen percent (15%) authorized by legislative action or was upgraded or reclassified.
- Q. LEASE shall mean a contract by which an individual or entity conveys to another an interest in real property or tangible personal property for a designated period

of time for a specified rent or other compensation. Lease shall include transactions in which a transfer of title or possession of tangible personal property occurs, such as a license transaction.

- R. LEASE-PURCHASE AGREEMENT shall mean a lease containing a purchase option providing that the lessee's periodic payments, or parts thereof, may be applied to the rent required and to the payments required to purchase the property, upon lessee exercising the purchase option; a conditional sales contract.
- S. MEMBERS OF THE GENERAL ASSEMBLY shall mean member(s) of the Arkansas House of Representative or of the Arkansas Senate. The term "Legislator", when used in the Regulations, shall have the same meaning.
- T. POSITION OF CONTROL shall mean the possession, direct or indirect, of the power to direct or cause the direction of the purchasing policies of an entity, or the power to exercise a deciding influence over the management of the entity.
- U. PURCHASE AGREEMENT shall mean any written instrument evidencing the agreement of an agency to purchase tangible personal property or services from a vendor.
- V. REQUEST FOR PROPOSAL shall mean a method of procurement which requires issuance of a Request for Proposal, public notice, public opening at a pre-designated time and place, and evaluation of proposals to determine the relative abilities of bidders to perform, including the degree of technical or professional experience, and price is not the only consideration in selection of the bidder.
- W. SOLE SOURCE shall mean a procurement or contractual agreement which by virtue of the performance specifications is available from a single source.
- X. STATE AGENCY INTERNAL AUDIT OFFICE shall mean the Office of Internal Audit created by Executive Order 99-08 within the Department of Finance and Administration to promote accountability, integrity, and efficiency in the operation of the Executive Branch. This Office shall be responsible for the examination of records that agencies are required to maintain pursuant to Executive Order 98-04 and these Regulations.
- Y. STATE EMPLOYEE shall mean any employee of any state agency employed in a regular salary position or extra-help position not to include contract labor.
- Z. SUBCONTRACTOR shall mean any person or entity entering into an agreement with a state agency contractor, whereby the contractor assigns or otherwise delegates to the person or entity, for consideration, all, or any part, of the performance required of the contractor under the terms of the contract between the state agency and contractor. For purposes of these Regulations, the term subcontractor shall apply to any assignment of an agreement with a state agency, specifically including, but not limited to, a contract, a purchase agreement, and a lease.
- AA. TAXPAYER IDENTIFICATION NUMBER (TIN) shall mean the individual's social Security Number or the entity's Federal Identification Number.
- BB. VENDOR shall mean an individual or entity that offers commodities or services for sale.

**2. DISCLOSURE REQUIRED**

A. INFORMATION REQUIRED TO BE DISCLOSED. For purposes of the requirements of these Regulations, disclosure is required of any of the following, whether current or former:

- (1) member of the Arkansas General Assembly,
- (2) constitutional officer,
- (3) board or commission member,
- (4) state employee,
- (5) the immediate family member, including the spouse, of any of (1) – (4), or
- (6) any entity in which any person designated in (1) – (5):
  - (i) holds any position of control, or
  - (ii) holds any ownership interest of 10% or greater.

B. DISCLOSURE REQUIRED OF CONSTITUTIONAL OFFICERS AND SPOUSE TO BE MADE UNDER PENALTY OF PERJURY. Act 34 of 1999 provides that all disclosure required to be made by a constitutional officer, including a member of the General Assembly, or the spouse of a constitutional officer shall be made under penalty of perjury.

C. CONTRACTS AND EMPLOYMENT EXEMPT FROM DISCLOSURE REQUIREMENTS.

- (1) CONTRACTS AND SUBCONTRACTS LESS THAN \$10,000.  
Agencies are not required to obtain the disclosure listed in Section 2 from potential contractors, whether individuals or entities, for which the total consideration is less than or equal to \$10,000. Contractors are not required to obtain the disclosure listed in Section 2 from potential subcontractors, whether individuals or entities, for which the total consideration is less than or equal to \$10,000. Agencies shall not split procurements into two or more contracts in order to circumvent the limit on the amount allowed to be purchased exempt from the disclosure requirements.
- (2) OTHER CONTRACTS EXEMPT FROM DISCLOSURE REQUIREMENTS.
  - (a) Contracts with another governmental entity such as a state agency, public education institution, federal governmental entity, or body of a local government.
  - (b) Commodities procured from non-profit workshops authorized by Ark. Code Ann. 19-11-501 et seq.
  - (c) Farm products procured in accordance with Ark. Code Ann. 19-11-203(14)(H).
  - (d) Procurement of postage.
  - (e) Payment of taxes.
  - (f) Contracts with utilities defined, recognized, and regulated by the Arkansas Public Service Commission as a monopoly offering.
  - (g) Medical items used for the treatment and diagnosis of patients, if procured through a group purchasing entity serving other public health institutions when substantial savings are available.
  - (h) Purchase orders issued by agencies against Office of State Purchasing contracts.
  - (i) Expenditures not involving public funds.
  - (j) Published books, manuals, maps, periodicals, films, technical pamphlets, and copyrighted educational aids for use in libraries

and for other informational or instructional purposes in instances in which other applicable law does not provide a restrictive means for the acquisition of them.

- (k) Services of visiting speakers, lecturers, and performing artists.
- (l) Works of art for museum and public display.

- (3) EXEMPTION FROM DISCLOSURE FOR WORK STUDY STUDENTS. Agencies shall not be required to obtain disclosure or approval of applicants for work study positions.

D. DISCLOSURE BY INDIVIDUALS.

- (1) DISCLOSURE GENERALLY. Except for contracts exempt from disclosure by Section 2 C and employment applicants exempt from disclosure by Section 2 D(2), agencies shall require any individual who desires to enter into, extend, amend, or renew a contract, lease, or purchase agreement, or obtain employment to disclose whether that individual is one of the persons designated in Section 2 A (1) – (5).
- (2) EMPLOYMENT – ONLY FINALISTS FOR POSITION REQUIRED TO DISCLOSE. Agencies are not required to obtain disclosure of all applicants for employment. Only those applicants who are chosen as finalists for the position are required to disclose. Agencies may elect to obtain disclosure from each of the finalists for the position at the time of the interview.

- E. DISCLOSURE BY ENTITIES. Except for contracts exempt from disclosure by Section 2 C, agencies shall require any entity that desires to enter into, extend, amend, or renew a contract, lease, or purchase agreement to disclose whether any person designated in Section 2 A (1) – (5) holds any position of control or holds any ownership interest of 10% or greater.

- F. DISCLOSURE BY SUBCONTRACTORS. Except for contracts exempt from disclosure by Section 2 C, agencies shall require any individual who, or entity that, desires to enter into, extend, amend, or renew a contract, lease, or purchase agreement to certify, in writing:

- (1) That, prior to entering any agreement with any subcontractor, as defined in these Regulations, for which the total consideration is greater than \$10,000, the contractor shall require the subcontractor to complete a **Contract Disclosure and Certification Form** (Form F-1, F-2).
- (2) That any agreement, current or future, between the contractor and a subcontractor for which the total consideration is greater than \$10,000 shall contain the following language:

Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation or policy adopted pursuant to that Order, shall be a material breach of the terms of this subcontract. The party who fails to make the required disclosure or who violates the rule, regulation, or policy shall be subject to all legal remedies available to the contractor.

- (3) That no later than 10 days after entering into any agreement with a subcontractor for which disclosure is required, the contractor shall transmit to the agency a copy of the **Contract Disclosure and**

**Certification Form** completed and signed by the subcontractor and a statement containing the dollar amount of the subcontract.

- (4) This disclosure requirement applies only to agreements entered into between subcontractors and the contractor who contracts with the state agency.

- G. **MODIFIED DISCLOSURE REQUIRED FOR CHANGE ORDERS TO CAPITAL IMPROVEMENT PROJECTS.** If at the time a change order is processed against an original approved capital improvement project, all of the subcontractors are the same as those on the original approved project, the contractor may certify that fact on the change order in lieu of obtaining a new set of disclosure forms from each of the subcontractors. In the event the contractor enters into an agreement with a new subcontractor after the execution of the original approved project, the contractor is then responsible for insuring that disclosure has been obtained from the new subcontractor prior to processing and approval of the change order. All capital improvement construction contract change orders that are subject to these Regulations shall contain the following language:

“I, the undersigned contractor, do hereby certify that I have reviewed my files and declare that there are / are not (circle one) new or additional subcontractors, which are required to be disclosed under this contract pursuant to Governor’s Executive Order 98-04. I have attached to this change order those disclosures required under the Order. I understand that any false information provided by, or omission made by, me may be grounds for termination due to a material breach of the contract.”

### 3. **RESPONSIBILITY OF AGENCY TO OBTAIN DISCLOSURE**

- A. **DISCLOSURE MADE ON APPROVED DISCLOSURE FORMS.** Each agency shall inform any potential contractor or employee, with the exception of those otherwise exempt from the disclosure requirements, of the disclosure required by Section 2 and shall provide the potential contractor or employee with the appropriate disclosure form approved for that purpose by the Department of Finance and Administration, as amended from time to time. The current **Contract Disclosure and Certification Form** is located on Pages F-1, F-2 of the Regulations. The current **Employee Disclosure and Certification Form** is located on Page F-3 of the Regulations.
- B. **DISCLOSURE IS CONDITION OF CONTRACT.** The agency shall inform each potential contractor who desires to enter into a contract that is not exempt from the disclosure requirements that disclosure is a condition of the contract and that the agency cannot enter into any such contract for which disclosure is not made.
- C. **CONTRACTOR’S DUTY TO OBTAIN DISCLOSURE OF SUBCONTRACTORS.** The agency shall inform each potential contractor that:
  - (1) disclosure is required to be a condition of any present or future subcontract for which the total consideration is greater than \$10,000;
  - (2) the contractor must require any present or future subcontractor, for which the subcontract amount is greater than \$10,000, to complete and sign a **Contract Disclosure and Certification Form**; and
  - (3) the contractor must transmit a copy of the subcontractor’s disclosure form to the agency and a statement containing the dollar amount of the subcontract.

- D. GOODS AND SERVICES FOR WHICH DISCLOSURE MAY BE OBTAINED AFTER PURCHASE. Certain goods and services are exempt from the requirement that disclosure be obtained prior to entering into the contract by virtue of the necessity for obtaining these goods or services expediently. Example: emergency procurements authorized by Ark. Code Ann. 19-11-233. The exemption applies only to the requirement that the agency obtain disclosure prior to entering the contract. The agency is not exempt from the requirement of obtaining disclosure for any such contracts greater than \$10,000 as soon as reasonably possible and reporting any contract that would otherwise be subject to reporting to Department of Finance and Administration.

**4. PROHIBITED CONTRACTS; CONTRACTS REQUIRING APPROVAL**

- A. PROFESSIONAL OR CONSULTANT SERVICES CONTRACTS BETWEEN AGENCIES AND STATE EMPLOYEES PROHIBITED. Except as otherwise permitted by law, agencies are prohibited from entering into, extending, amending, or renewing professional or consultant services contracts with state employees who are paid from extra help or regular salaries. None of the exceptions contained in Section 4 C allow agencies to enter into otherwise prohibited professional or consultant services contracts with state employees.
- B. PROFESSIONAL OR CONSULTANT SERVICES CONTRACTS BETWEEN AGENCIES AND CONSTITUTIONAL OFFICERS SUBJECT TO PRIOR APPROVAL. Constitutional officers, including members of the General Assembly, or their spouses may enter into professional or consultant services contracts with agencies only upon the prior approval of the Joint Budget Committee during legislative sessions, or the Legislative Council between sessions, and the Governor.
- C. CONTRACTS SUBJECT TO COMPETITIVE SEALED BID OR REQUEST FOR PROPOSAL.
- (1) An agency may enter into, extend, or renew a contract, lease, or grant with a constitutional officer, including members of the General Assembly, the spouse of a constitutional officer, or an entity in which the officer or spouse holds an ownership interest greater than ten percent (10%) if (i) the contract is the result of competitive sealed bidding or a request for proposal, and (ii) such officer played no role, directly or indirectly, in the administrative determination of specifications for the bid or request for proposal, in the administrative evaluation or consideration of bid or request for proposal, or in the administrative decision to accept the bid or request for proposal.
- (2) An agency may enter into, extend, amend, or renew a contract, lease, or purchase agreement with a board or commission member, state employee, the immediate family member of any of these, or any entity in which any of these persons has an ownership interest of 10% or greater if the contract is the result of competitive sealed bidding or a request for proposal.
- D. CONTRACTS AND GRANTS GREATER THAN \$10,000 AND NOT SUBJECT TO COMPETITIVE SEALED BIDDING OR REQUEST FOR PROPOSAL REQUIRE APPROVAL. An agency must obtain approval in order to enter into, extend, amend, or renew a contract, lease, or purchase agreement not subject to competitive sealed bidding or a request for proposal, as follows:

- (1) If the total consideration for the contract is greater than \$10,000, the approval of the Chief Fiscal Officer of the State is required if the potential contractor or lessee is one of the following:
  - (a) a state employee or the employee's immediate family member;
  - (b) a board or commission member or the member's immediate family member, or
  - (c) any entity in which a state employee or board or commission member, or an immediate family member of any of these:
    - holds any position of control, or
    - holds any ownership interest of 10% or greater
- (2) If the total consideration for the contract is greater than \$10,000 and the potential contractor, lessee, or grantee is a constitutional officer, including a member of the General Assembly, the spouse of a constitutional officer, or a corporation, limited liability company, partnership, or any other legal entity of which a constitutional officer or the officer's spouse has an ownership interest of at least ten percent (10%), the contract, lease, or grant must receive the prior approval of the Joint Budget Committee during legislative sessions, or the Legislative Council between sessions, and the Governor.

E. SUBCONTRACTS. A constitutional officer including members of the General Assembly, the spouse of a constitutional officer, or a corporation, limited liability company, partnership, or any other legal entity of which a constitutional officer or the officer's spouse has an ownership interest of at least ten percent (10%) may not receive any subgrant, subcontract, or assignment of lease from a state agency unless:

- (1) the constitutional officer, spouse, or legal entity is disclosed as a subgrantee or subcontractor in the competitive bid or request for proposal; or
- (2) for contracts not requiring competitive bidding or a request for proposal, prior approval is obtained from the Joint Budget Committee during legislative sessions, or the Legislative Council between sessions, and the Governor.

5. **AGENCY APPROVAL OF CONTRACTS**

A. NO CONTRACT FOR COMMODITIES OR SERVICES GREATER THAN \$10,000 SHALL BE AWARDED, EXTENDED, AMENDED, OR RENEWED BY ANY AGENCY TO ANY CONTRACTOR WHO HAS NOT DISCLOSED AS REQUIRED IN SECTION 2, WITH THE EXCEPTION OF CONTRACTS IN SECTION 3 D FOR GOODS AND SERVICES FOR WHICH DISCLOSURE MAY BE OBTAINED AFTER PURCHASE.

B. AGENCY'S DUTY TO VERIFY THAT CONTRACTS NOT PROHIBITED. Prior to the award, extension, amendment, or renewal of any contract greater than \$10,000, the agency shall review the contract and verify:

- (1) that the Contract Disclosure and Certification Form has been completed, signed, and included in the contract, and
- (2)
  - (a) that the contract is not prohibited or subject to approval; or
  - (b) if subject to approval, that the required approval has been obtained.

- C. **REQUIRED CONTRACT LANGUAGE.** Every contract greater than \$10,000 executed by an agency shall include any and all disclosures as a term of the contract. The required language may be inserted in the request for proposal, if the RFP is incorporated into the contract document that is executed by the agency. Agencies shall include the following language in any contract, lease, or any assignment of the terms of the agreement to any individual or entity:

Failure to make any disclosure required by Governor's Executive Order 98-04 or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the agency.

(Sections 6 and 7 pertaining to disclosure for employment not re-created here)

8. **RESPONSIBILITY OF AGENCY TO REPORT**

- A. **GRANTS, CONTRACTS, OR LEASES AWARDED TO CONSTITUTIONAL OFFICER OR SPOUSE, INCLUDING MEMBERS OF THE GENERAL ASSEMBLY, OR TO ENTITY IN WHICH OFFICER OR SPOUSES HOLDS 10% OWNERSHIP INTEREST.** The awarding agency shall report, in writing, to the DFA Office of Accounting for transmission to the Joint Budget Committee during legislative sessions, or the Legislative Council between sessions, and the Governor, if (i) any constitutional officer, including members of the General Assembly, or (ii) constitutional officer's spouse, or (iii) corporation, limited liability company, partnership, or any other legal entity of which a constitutional officer or the officer's spouse has an ownership interest of at least ten percent (10%) becomes the recipient of a grant, contract, or lease through competitive sealed bidding or a request for proposal, or if a grant, contract, or lease awarded prior to the person becoming a constitutional officer is renewed or extended.
- B. **CONTRACTS, LEASES, PURCHASE AGREEMENTS AWARDED TO STATE EMPLOYEES, BOARD OR COMMISSION MEMBERS OR THEIR IMMEDIATE FAMILY MEMBERS, OR TO LEGAL ENTITIES OWNED IN PART BY THEM.** The awarding agency shall report, in writing, to the DFA Office of Accounting for transmission to the Joint Budget Committee during legislative sessions, or the Legislative Council between sessions, and the Governor if (i) any state employee or immediate family member, or (ii) board or commission member or immediate family member, or (iii) any legal entity of which a state employee or board or commission member, or the immediate family member of either, holds an ownership interest of at least ten percent (10%) becomes the recipient of a contract, or lease for which the total consideration is greater than Ten Thousand Dollars (\$10,000) and which is not subject to competitive bidding or a request for proposal.
- C. **EMPLOYMENT OF IMMEDIATE FAMILY MEMBERS.** Any state agency that enters into employment with any of the following:
- (1) immediate family member, other than the spouse, of a constitutional officer, including members of the General Assembly;
  - (2) immediate family member, including the spouse, of a state employee or a board or commission member
- shall report the employment, in writing, to the DFA Office of Accounting for transmission to the Joint Budget Committee during legislative sessions, or the Legislative Council between sessions, and the Governor.

- D. PROCEDURE FOR REPORTING. All required reports, as provided in this section 8, shall be made by each agency on a quarterly basis to the Department of Finance and Administrative Office of Accounting at P.O. Box 3278, Little Rock, Arkansas 72203. Reports shall be made no later than ten (10) business days following the end of each calendar quarter. Reports shall be transmitted electronically, unless the agency lacks the capacity to transmit electronically, in which case reports shall be made in paper format. Transmission of the report to the DFA Office of Accounting shall satisfy the requirement that the report be made to the appropriate legislative body and the Governor. These reports that were previously made to the Office Disclosure and Review are now made by the agency to the Office of Accounting. The Office of Accounting shall compile the reported information and transmit a copy to the appropriate legislative body and the Governor.

9. **SOLE SOURCE PROCUREMENT**

- A. Agencies shall review all sole source contractual agreements to ensure compliance with the purpose and intent of Executive Order 98-04.
- B. All professional or consultant services contracts that indicate a sole source shall include written justification for using the sole source and shall be included in the contract.
- C. The State Purchasing Director or a designee above the level of an agency purchasing official must determine in writing that it is not practicable to use other than the required or designated commodity or service.

10. **AGENCIES TO KEEP ADEQUATE RECORDS; PRESERVATION OF RECORDS; EXAMINATION OF RECORDS**

- A. RECORDS REQUIRED. All records, including the required supporting documents, shall be considered a part of each agency contract, lease, or other agreement, and shall be retained in the files of the agency.
- B. PRESERVATION OF RECORDS. All records pertaining to transactions involving agency purchases made by the agency shall be preserved for a period of not less than 5 years from the expiration of the contract, and as required by Ark. Code Ann. 13-4-101 et seq.
- C. EXAMINATION OF RECORDS. All of the foregoing records shall be made available for examination upon request of an authorized representative(s) of the Department of Finance and Administration, Office of State Agency Internal Audit. The purpose of the examination is to verify that agencies have complied with Executive Order 98-04, Act 34 of 1999, and these Regulations.

11. **FAILURE TO DISCLOSE AND REPORT; VIOLATIONS**

- A. Any willful and knowing violation of act 34 of 1999 shall constitute a Class D felony. Venue for a judicial action for such a violation shall be in the county of the defendant's domicile.
- B. Violation of any rule or any of these regulations promulgated to administer Act 34 of 1999 or the failure of a constitutional officer including members of the General Assembly or spouse to disclose his or her interest in any contract, grant, or lease, or in any subcontract, subgrant, or assignment of lease as required by Act 34 of 1999 or by these regulations shall be grounds for voiding the contract, grant, lease agreement, subcontract, subgrant, or lease assignment and the

constitutional officer or spouse may be required to refund any monies received thereunder.

- C. The Arkansas Ethics Commission is authorized to investigate any complaints or allegations of violations of Act 34 of 1999 and to make findings thereon. In the investigation of such matters, Act 34 specifically gives the Commission all authority and powers as granted to it under the provisions of Ark. Code Ann. 7-6-217 and 7-6-218.
  
- D. **CONDITIONS WHICH CONSTITUTE MATERIAL BREACH OF CONTRACT.** The failure of any contractor, whether individual or entity, to satisfy any of the following conditions, in addition to those conditions provided in existing law, may, at the option of the agency, be considered a material breach of the contract:
  - (1) the person or entity has failed to disclose any information required by Section 2 A, or has otherwise violated any rule, regulation, or policy adopted pursuant to Executive Order 988-04;
  - (2) the person or entity has failed to include as a condition in any agreement with any subcontractor the disclosure requirements of Section 2 F; or
  - (3) the person or entity has failed to obtain and report disclosure obtained from a subcontractor at any time during the term of the contract.
  
- E. **OPTIONS AVAILABLE TO AGENCY UPON NON-FRAUDULENT OR NOT IN-BAD-FAITH BREACH BY CONTRACTOR.** If it is determined that a contractor, not acting fraudulently or in bad faith, has failed to satisfy any of the conditions Section 12 A, an agency may, at its option:
  - (1) **PRIOR TO AWARD OF CONTRACT.**
    - (a) Cancel the solicitation; or
    - (b) Revise the solicitation to satisfy the conditions which were previously unsatisfied, and proceed with the contract, if the agency determines that doing so is in the best interest of the state.
  
  - (2) **SUBSEQUENT TO AWARD OF CONTRACT.**
    - (a) Ratify and affirm the contract, if the agency determines that doing so is in the best interests of the state; or
    - (b) Declare the contractor to be in default and terminate the contract.
  
- F. **RATIFICATION OF CONTRACT.**
  - (1) Prior to any determination that ratification is the appropriate option, the agency shall prepare a written justification for the determination that ratification of the contract is in the best interest of the state.
  
  - (2) In connection with ratification of the contract, the agency shall:
    - (a) Require the contractor to complete a Contract Disclosure and Certification Form containing any information required by Section 2 A that the contractor previously failed to disclose; or
    - (b) Require the contractor to amend the subcontract to include as a condition in the subcontract the disclosure requirements of Section 2 F; or

- (c) Require the contractor to provide the subcontractor disclosure; and
  - (d) Submit all contracts in Section 4 C(2) for which approval is required, to the Chief Fiscal Officer of the State for approval of the ratification of the contract. The request for approval should indicate that the contract was previously approved, that the agency subsequently discovered that the contractor failed to meet one or more of the disclosure and reporting requirements, and that the agency determined that ratification of the contract is in the best interests of the state. The request should include the written justification for the agency's determination that ratification is in the best interests of the state.
- G. TERMINATION OF CONTRACT. The election of the option to terminate the contract for any failure of a contractor to satisfy any of the conditions in Section 12 A should be determined in writing by the designated agency official. The procedures for resolution of contract and breach of contract controversies and any other applicable procedures contained in the State of Arkansas Purchasing Law and Regulations promulgated by the Office of State Purchasing shall apply in the event of a termination of any contract as a result of breach of the contract as provided in Section 12 A.
- H. OPTIONS AVAILABLE TO AGENCY UPON FRAUDULENT OR BAD FAITH BREACH BY CONTRACTOR. Upon discovery that a contractor, who has acted fraudulently or in bad faith, has failed to satisfy any of the conditions in Section 12 A, an agency may, at its option:
- (1) Declare the contract to be null and void; or
  - (2) Direct the individual or entity awarded the contract to proceed with performance of the contract and pay such damages, if any, as may be appropriate if such action shall be in the best interests of the state.
- I. REPORT OF CONTRACTS RATIFIED, TERMINATED, OR DECLARED VOID. All contracts which are ratified pursuant to Section 12 C, terminated pursuant to Section 12 D, or declared null and void pursuant to Section 12 E, shall be reported by the agency to the Department of Finance and Administration no later than 10 days following ratification, termination, or declaration of nullity by the agency.

(Sections 12 and 13 pertaining to disclosure for employment not re-created here)
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**14. AGENCIES AFFECTED; VOLUNTARY DISCLOSURE**

- A. AFFECTED AGENCIES. The provision of Executive Order 98-04, and these Regulations, shall apply to all agencies within the control of the Governor.
- B. VOLUNTARY COMPLIANCE ENCOURAGED OF EXEMPT PERSONS AND AGENCIES. The following persons, agencies, and other entities not subject to the control of the Governor are encouraged to voluntarily comply with Executive Order 98-04 and these Regulations: Members of the Legislature, any employees of, or positions in the Legislative branch of Arkansas state Government; the Justices of the Supreme Court, Judges of the Court of Appeals, judges of the Circuit, Chancery or Circuit/Chancery Courts, judges of the Inferior Courts, or any employee of, or position in the Judicial branch of Arkansas State government; elective officers of the State and any employee of the offices of lieutenant Governor, Attorney General, Secretary of the State, State Auditor, Land

Commissioner, and state Treasurer; members and staff of multi-member boards, commissions or committees that are exempt by law from the provisions of the "Arkansas Purchasing law", Ark. Code Ann. 19-11-201 et seq.; and employees of the Arkansas Highway and Transportation Department and the Arkansas Game and Fish Commission.

- C. PROCEDURE FOR VOLUNTARY COMPLIANCE. Any person, agency, or other entity desiring to voluntarily comply should contact the Office of Accounting at P.O. Box 3278, Little Rock, Arkansas 72203, telephone number (501) 682-1675 to obtain a copy of these Regulations and to notify the Office of the person's or agency's intent to voluntarily comply.
15. REGULATIONS SUPPLEMENTAL TO AND NOT IN ABROGATION OF CURRENT REQUIREMENTS OF AGENCIES IN BOTH LAW AND REGULATIONS. No provision of these Regulations shall be considered to repeal any requirement of existing law or regulations promulgated pursuant to existing law. The agency requirements contained in these Regulations are supplemental to all current agency responsibilities.

**State of Arkansas**  
**SECRETARY OF STATE**  
State Capitol  
Little Rock, Arkansas 72201-1094

**FOREIGN CORPORATIONS**  
**TRANSACTING BUSINESS IN ARKANSAS**

A foreign corporation may not transact business in this state until it obtains a Certificate of Authority from the Secretary of State.

The following activities, among others, do not constitute transacting business as stated in A.C.A. 4-27-1501 (B):

1. Maintaining, defending, or settling any proceeding;
2. Holding meetings of the board of directors or shareholders, or carrying on other activities concerning internal corporate affairs;
3. Maintaining bank accounts;
4. Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;
5. Selling through independent contractors;
6. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
7. Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;
8. Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
9. Owning, without more, real or personal property;
10. Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature;
11. Transacting business in interstate commerce.

Corporations which fail to obtain a Certificate of Authority may not maintain a proceeding in any court in this state based on a cause of action arising from the transaction of business and may be found liable for civil penalties ranging from \$100 to \$5,000.

For information regarding the application seeking authorization to do business in this state please write,

Secretary of State  
Corporation Department  
Room 058  
State Capitol  
Little Rock, Arkansas 72201-1094  
(501) 682-3409

## **B. Forms and Instructions**

**STATE OF ARKANSAS  
CONTRACT SERVICES REQUEST  
AMENDMENT TO PROFESSIONAL OR CONSULTANT SERVICES  
CONTRACT**

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**CONTRACT #:** \_\_\_\_\_ **DATE:** \_\_\_\_\_ **AMENDMENT #:** \_\_\_\_\_

**1. CONTRACTING PARTIES:**

**AGENCY NUMBER/NAME:** \_\_\_\_\_ / \_\_\_\_\_

**CONTRACTOR NAME:** \_\_\_\_\_

**2. NEW CONTRACT EXPIRATION DATE:** \_\_\_\_\_

**3. PURPOSE OF AMENDMENT:** \_\_\_\_\_

---

**4. AMENDED DOLLAR AMOUNT:**

**COMPENSATION:** \$ \_\_\_\_\_

**REIMBURSABLE EXPENSE:** \$ \_\_\_\_\_

**TOTAL:** \$ \_\_\_\_\_

EXCEPT AS SPECIFICALLY AMENDED HEREIN (OR AS ATTACHED) ALL OTHER TERMS AND CONDITIONS OF THE ABOVE REFERENCED CONTRACT REMAIN UNCHANGED.

**5. SIGNATURES**

\_\_\_\_\_  
**CONTRACTOR**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**AGENCY DIRECTOR**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**TITLE**

\_\_\_\_\_  
**TITLE**

\_\_\_\_\_  
**ADDRESS**

\_\_\_\_\_  
**ADDRESS**

**APPROVED:**

\_\_\_\_\_  
**DEPARTMENT OF FINANCE AND ADMINISTRATION**

\_\_\_\_\_  
**DATE**

**STATE OF ARKANSAS  
 CONTRACT SERVICES REQUEST  
 AMENDMENT TO PROFESSIONAL OR CONSULTANT SERVICES  
 CONTRACT**

**CONTRACT #:** \_\_\_\_\_ **DATE:** \_\_\_\_\_ **AMENDMENT #:** \_\_\_\_\_

**THE AGENCY CONTACT PERSON FOR QUESTION(S) REGARDING THIS CONTRACT:**  
**THIS SECTION SHALL BE COMPLETED ON EVERY CONTRACT:**

\_\_\_\_\_ (Name) \_\_\_\_\_ (Title)

\_\_\_\_\_ (MAILING ADDRESS FOR RETURNED CONTRACT)

\_\_\_\_\_ (TELEPHONE NUMBER) \_\_\_\_\_ (EMAIL)

1. REASON CHANGES NOT INCLUDED IN ORIGINAL CONTRACT:

\_\_\_\_\_  
 \_\_\_\_\_

2. FOR EACH AMENDMENT INVOLVING A CHANGE IN THE CONTRACT DOLLAR AMOUNT, ENTER THE PREVIOUS CONTRACT AMOUNTS, THIS AMENDMENT'S AMOUNTS SHOWING (+) INCREASE OR (-) DECREASE IN COMPENSATION AND/OR REIMBURSABLE EXPENSES, AND THE NEW TOTAL COMPENSATION AND/OR REIMBURSABLE EXPENSES FOR THIS CONTRACT (TOTAL EACH COLUMN). NOTE: ANY INCREASE IN THE RATE OF COMPENSATION MUST BE ACCOMPANIED BY A COPY OF THE ORIGINAL CONTRACT LANGUAGE AUTHORIZING SUCH INCREASE.

	<u>PREVIOUS</u>	<u>THIS AMENDMENT</u>	<u>NEW TOTAL</u>
<b>COMPENSATION</b>	\$ _____	\$ _____	\$ _____
<b>EXPENSE</b>	\$ _____	\$ _____	\$ _____
<b>TOTAL</b>	\$ _____	\$ _____	\$ _____

**STATE OF ARKANSAS  
 CONTRACT SERVICES REQUEST  
 AMENDMENT TO PROFESSIONAL OR CONSULTANT SERVICES  
 CONTRACT**

CONTRACT #: \_\_\_\_\_ DATE: \_\_\_\_\_ AMENDMENT #: \_\_\_\_\_

**3. SOURCE OF FUNDS:**

**COMPLETE APPROPRIATE BOX(S) BELOW:**

FUND	BUSINESS AREA	FUND CENTER	COMMITMENT ITEM	% FEDERAL FUND	% STATE FUND	% CASH FUND	% TRUST FUND	Line & Column Totals
<b>TOTAL %</b> Entries above must be % of total funds, enter column totals, column totals should sum to 100%								

Source of Federal Grants Funds \_\_\_\_\_ OTHER: \_\_\_\_\_

Source of Cash Funds \_\_\_\_\_  
**MUST BE SPECIFIC** (i.e. fees, tuition, agricultural sales, bond proceeds, donations, etc.)

**STATE OF ARKANSAS  
AMENDMENT TO PROFESSIONAL OR CONSULTANT SERVICES CONTRACT  
FORM OSP-1-A  
INSTRUCTIONS**

The **Form OSP-1A** is to be completed in its entirety for every amendment to a contract. Those fields that are unchanged in items 2 and 4 (1<sup>st</sup> page), item 2 (2<sup>nd</sup> page) and item 3 (3<sup>rd</sup> page) will be left blank.

**CONTRACT #:** Enter the number of the contract being amended. In parentheses to the right, enter the AASIS purchase order number for this contract. If there is more than one purchase order, enter the number of the purchase order applicable to this amendment. (Repeat contract number only on pages 2 and 3.)

**DATE:** Enter the effective date of this amendment. (Repeat on pages 2 and 3.)

**AMENDMENT #:** Enter the number of this amendment. Amendments are numbered consecutively beginning with 1. (Repeat on pages 2 and 3.)

**AGENCY NAME:** Enter agency and division/office name (ex., DHS / Division of Medical Services).

**CONTRACTOR NAME:** Enter contractor name exactly as it appears on the original contract.

**NEW CONTRACT EXPIRATION DATE:** Enter the revised expiration date **ONLY** if applicable. If expiration date is unchanged, leave blank.

**PURPOSE OF AMENDMENT:** Enter a description of the purpose for this amendment, including a reference to any changes in attachments and to changes in geographical service coverage area.

**AMENDED DOLLAR AMOUNT:** Enter the revised Compensation, Reimbursable, and/or Total dollar amounts **ONLY** if applicable. If dollar amounts are unchanged, leave blank.

**SIGNATURES:** The Contractor and DHS division/office Director shall enter his/her dated signature, title, and mailing address.

**THE AGENCY CONTACT PERSON...:** Enter the name, mailing address, telephone number, and e-mail address of the appropriate DHS program division/office individual for questions concerning the contract.

**REASON CHANGES NOT INCLUDED IN ORIGINAL CONTRACT:** State the reason(s) the change(s) made by this amendment were not included in the original contract.

**FOR EACH AMENDMENT INVOLVING A CHANGE IN THE CONTRACT DOLLAR AMOUNT...:** Enter this information **ONLY** if funding levels are being changed with this amendment. If unchanged, leave blank.

**SOURCE OF FUNDS:** Enter this information **ONLY** if funding levels and/or funding sources are being changed with this amendment. If unchanged, leave blank. If ANY funding levels and/or funding sources are being changed, complete the grid in its entirety. NOTE: For each funding stream, the percentage indicated for Federal, State, Cash, and Trust is the percentage in comparison to the TOTAL funding.

**Arkansas State Building Services**  
**AMENDMENT JUSTIFICATION**

**AGENCY:** \_\_\_\_\_

**MOF:** \_\_\_\_\_ **If no MOF, Character Code** \_\_\_\_\_

**MOF Project Description:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Construction Funds Listed on the MOF:** \$ \_\_\_\_\_

**Architect/Engineer Funds listed on the MOF:** \$ \_\_\_\_\_

**Number of Professional Service Contracts in MOF:** \_\_\_\_\_

**ARCHITECT/ENGINEER:** \_\_\_\_\_

**OBJECTIVES & SCOPE:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Architect's Fee: \$** \_\_\_\_\_

**Original contract - Compensation:** \$ \_\_\_\_\_

**- Reimbursable:** \$ \_\_\_\_\_

**Total Compensation inclusive of Reimbursables:** \$ \_\_\_\_\_

**Term of Contract:** \_\_\_\_\_ **to** \_\_\_\_\_

**AMENDMENT #** \_\_\_\_\_

**Increase/Decrease Compensation:** \$ \_\_\_\_\_

**Explanation:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Increase/Decrease Reimbursable:** \$ \_\_\_\_\_

**Breakdown:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Extend Ending Date:** Yes  No

**If yes Please Explain:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Other** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**CONTRACTOR:** \_\_\_\_\_

**Contract Amount:** \$ \_\_\_\_\_

**Change Order(s)** \_\_\_\_\_ \$ \_\_\_\_\_

**(# of change orders)**

**TOTAL** \$ \_\_\_\_\_

**For Additional Information contact** \_\_\_\_\_ **at** \_\_\_\_\_



**CERTIFICATION REGARDING LOBBYING**  
**CERTIFICATION FOR CONTRACTS, GRANTS, LOANS,**  
**AND**  
**COOPERATIVE AGREEMENTS**

**DHS-9350**

**ATTACHMENT \_\_\_\_\_**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," attached hereto, in accordance with its instructions. This disclosure form must be filed with the Arkansas Department of Human Services (DHS) at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. An even that materially affects the accuracy of the information reported includes:
  - a. A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action; or,
  - b. A change in the person(s) or individuals(s) influencing or attempting to influence a covered federal action; or,
  - c. A change in the officer(s), employee(s), or member(s) contracted to influence or attempt to influence a covered federal action.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts,

subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
(Authorized Provider Representative)

For: \_\_\_\_\_  
Name of Provider Agency

\_\_\_\_\_  
Title of Grant Program

**CERTIFICATION REGARDING LOBBYING**  
**CERTIFICATION FOR CONTRACTS, GRANTS, LOANS,**  
**AND**  
**COOPERATIVE AGREEMENTS**

**DHS-9350**

**Instructions**

**Purpose**

The Certification Regarding Lobbying is used to certify that the provider is not using or will not use federal appropriated funds to pay any person to influence or attempt to influence a federal official/employee in connection with the awarding of any federal contract, grant, loan, or cooperative agreement.

**Completion**

The Certification Regarding Lobbying shall be completed by the provider for awards in excess of \$100,000.00 and shall be included as an attachment to the legal plate (contract, agreement, grant, etc.). If the provider is using funds other than federal appropriated funds to pay for lobbying, Standard Form-LLL (Disclosure of Lobbying Activities) shall be completed in accordance with its instructions.

**Page 1 of 2**

**Attachment:** Enter the number of this attachment. Attachments are numbered sequentially beginning with "1".

**Page 2 of 2**

**By Authorized Provider Representative:** The provider or authorized representative shall sign his or her name and enter the date of signature.

**For Name of Provider Agency:** Enter the full legal name of the provider agency. (Print or type)

**Title of Grant Program:** Enter the title of each federal award received by the provider. Example: Social Services Block Grant.

If the provider has paid or will pay for lobbying using funds other than appropriated federal funds, Standard Form-LLL must be completed according to its instructions and returned with the proposal. If conditions exist which require disclosure during the contract period (see Certification Regarding Lobbying form DHS-9350, page 1 of 2, section 2, a, b, and c) additional copies of Standard Form-LLL may be obtained from the Contract Support Section contract officer.

## Routing

The Certification Regarding Lobbying (DHS-9350) and standard Form-LLL, completed as applicable, (for awards in excess of \$100,000.00) shall be included with the proposal package and routed to the Office of Administrative Services (OAS), Contract Review Unit (CRU) for review. A copy shall be retained for the provider's files. The certification form shall be retained in the CRU contract file. Any disclosure forms (Standard Form-LLL) completed during the program year shall be routed to the OAS, CRU with a copy to be retained in the CRU Record Room.

NOTE: Several federal funding sources require receipt of the certification form for providers. In this case, the allocating agency is responsible for processing the certification form and Standard Form LLL, if applicable, to the appropriate federal agency.

Alternate formats (large print, audio tape, etc.) will be provided upon request.

# CHECKLIST FOR REVIEW OF CONTRACT WITH CONTRACTOR

Contract developer will meet with the contract provider representative to review the contract and contracting requirements. At a minimum, the following items will be reviewed:

- 1) \_\_\_ Verify correct name and address of provider
- 2) \_\_\_ Verify contract period (begin & end dates)
- 3) \_\_\_ Review total contract amount, including breakdown of compensation and reimbursable expenses, if applicable. This will include review of budget or service unit rate attachments
- 4) \_\_\_ Review Scope & Objectives
- 5) \_\_\_ Review Performance Based Contracting standards
- 6) \_\_\_ Review reporting requirements.
- 7) \_\_\_ Review General **Terms & Conditions**, with emphasis on:
  - a) \_\_\_ Reimbursement Methods; Payment Limitations; Match Requirements
  - b) \_\_\_ Billing & Payment procedures
  - c) \_\_\_ Confidentiality of Information
  - d) \_\_\_ Subcontracts
  - e) \_\_\_ Contractor and Subcontractor Disclosure requirements
  - f) \_\_\_ Records Retention & Access to Records
  - g) \_\_\_ Audit requirements – Current? Yes \_\_\_ No \_\_\_
  - h) \_\_\_ Notices (Names & addresses of contractor & agency contacts)
  - i) \_\_\_ Certifications (Lobbying & Debarment)
  - j) \_\_\_ Compliance with laws & policies (e.g., Non-Discrimination in service provision & employment practices)
- 8) \_\_\_ Identify persons providing services under the contract
- 9) \_\_\_ Review contractor certifications on **Form OSP-1** (State employment; personal monetary benefits; other contracts with State agencies)
- 10) \_\_\_ Review Disclosure policy and obtain fully completed disclosure forms (**Form PCS-D**) for contractors and subcontractors, if applicable.
- 11) \_\_\_ Review other contract requirements specific to the contract (ex., SSBG eligibility and billing requirements)

In addition:

- 12) \_\_\_ Provide answers to contractor questions
- 13) \_\_\_ Obtain contractor signature on contract, **Terms & Conditions** attachment, Disclosure form(s), and other signatures as necessary
- 14) \_\_\_ Advise provider of his/her responsibility to report changes and of the monitoring requirements (CSS Site Visits)

Comments

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Contract # \_\_\_\_\_  
Contract Officer \_\_\_\_\_  
Date \_\_\_\_\_

## CHECKLIST FOR SITE VISIT REVIEW WITH CONTRACTOR

Contract Officer will meet with the contract provider representative during the regularly scheduled site visit to review the contracting requirements and inquire about changes in status since the most recent contract action. At a minimum, the following items will be reviewed:

1. \_\_\_ Have there been changes in name, ownership, address, and/or TIN of contractor? Yes\_\_\_ No \_\_\_
2. \_\_\_ Are Audit requirements current? Yes\_\_\_ No \_\_\_
3. \_\_\_ Have there been changes in information reported at the most recent contract action in the following areas?
  - a. \_\_\_ Notices (Names & Addresses of contractor contacts) Yes\_\_\_ No \_\_\_
  - b. \_\_\_ State employment; personal monetary benefits; other contracts with State agencies Yes\_\_\_ No \_\_\_
  - c. \_\_\_ Contractor and Subcontractor Disclosures information Yes\_\_\_ No \_\_\_
4. \_\_\_ Does contractor need training or assistance with any of the following?
  - a. \_\_\_ Billing and payment procedures
  - b. \_\_\_ Confidentiality of Information
  - c. \_\_\_ Records retention and access to records
  - d. \_\_\_ Requirements specific to the contract (Ex., SSBG eligibility and billing requirements)
5. \_\_\_ Does contractor understand his/her reporting requirements?
6. \_\_\_ Does contractor have questions?
7. \_\_\_ Does contractor understand he/she is responsible for reporting changes?

Comments:

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**DEPARTMENT OF HUMAN SERVICES  
CONTRACT AUTHORIZATION/INPUT FORM**

**SECTION I ACTION REQUESTED:**

TYPE CONTRACT: \_\_\_\_\_ ACTION: \_\_\_\_\_ ACTION #: \_\_\_\_\_ EFFECTIVE DATE: \_\_\_\_\_

CONTRACT #: \_\_\_\_\_ PURCHASE ORDER #(S): \_\_\_\_\_

**SECTION II CONTRACTOR INFORMATION:**

VENDOR NUMBER: \_\_\_\_\_ TAXPAYER / EMPLOYER IDENTIFICATION NUMBER: \_\_\_\_\_

CONTRACTOR NAME: \_\_\_\_\_

CONTRACTOR ADDRESS: \_\_\_\_\_

"REMIT TO" ADDRESS, if different: \_\_\_\_\_

CONTACT NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_ PHONE (incl. Area Code): \_\_\_\_\_

**SECTION III PURPOSE OF THIS ACTION (Include geographical service coverage area for new contracts and for changes to coverage area):**

**SECTION IV AGREEMENT PERIOD:**

AGREEMENT BEGIN DATE: \_\_\_\_\_ AGREEMENT END DATE: \_\_\_\_\_

**SECTION V CONTRACT LIABILITY:**

TOTAL COMPENSATION: \$ \_\_\_\_\_ TOTAL REIMBURSABLE: \$ \_\_\_\_\_ TOTAL LIABILITY: \$ \_\_\_\_\_

**SECTION VI PROCUREMENT:**

- Request for Proposal (Selection Criteria Attached)       Request for Qualifications (Prior approval attached)
- Competitive Bid     SBS Criteria       Intergovernmental     Other       Emergency
- Sole Source (Prior approval attached)     Sole Source exempt by law     Sole Source Intent to Award (Advertisement Attached)

**SECTION VII EXCLUDED PROVIDER LIST**

EXCLUDED PROVIDER LIST CHECKED?     NO       YES

**SECTION VIII ADDITIONAL INSTRUCTIONS/INFORMATION:**

**SECTION IX DIVISION/OFFICE APPROVAL:**

PROGRAM AGENCY: \_\_\_\_\_ APPROVED BY: \_\_\_\_\_ PHONE (incl. Area Code): \_\_\_\_\_

DHS-9190 9/01/2002 ALTERNATE FORMATS (LARGE PRINT, AUDIO TAPE, ETC.) WILL BE PROVIDED UPON REQUEST page \_\_\_ of \_\_\_

**DEPARTMENT OF HUMAN SERVICES  
CONTRACT AUTHORIZATION/INPUT FORM**

**SECTION X FUNDING AND SERVICES:**

PROGRAM NAME			FUNDING NAME			FROM	TO	CFDA NUMBER		
FUND	FUND CENTER	COMMIT. ITEM	COST CENTER	GEN. LEDGER	INTERN. ORDER	FED %	STATE %	CASH %	TRUST %	CONTRACT AMOUNT
										\$
Payment Method		Payment Limits		Certified Match Amount and Percent, If Applicable			\$	%		
<b>SERVICES</b> <input type="checkbox"/> Not Applicable <input type="checkbox"/> See Contract Attachment #										
Service Name			Service Code			Unit Definition			Unit Rate	

PROGRAM NAME			FUNDING NAME			FROM	TO	CFDA NUMBER		
FUND	FUND CENTER	COMMIT. ITEM	COST CENTER	GEN. LEDGER	INTERN. ORDER	FED %	STATE %	CASH %	TRUST %	CONTRACT AMOUNT
										\$
Payment Method		Payment Limits		Certified Match Amount and Percent, If Applicable			\$	%		
<b>SERVICES</b> <input type="checkbox"/> Not Applicable <input type="checkbox"/> See Contract Attachment #										
Service Name			Service Code			Unit Definition			Unit Rate	

PROGRAM NAME			FUNDING NAME			FROM	TO	CFDA NUMBER		
FUND	FUND CENTER	COMMIT. ITEM	COST CENTER	GEN. LEDGER	INTERN. ORDER	FED %	STATE %	CASH %	TRUST %	CONTRACT AMOUNT
										\$
Payment Method		Payment Limits		Certified Match Amount and Percent, If Applicable			\$	%		
<b>SERVICES</b> <input type="checkbox"/> Not Applicable <input type="checkbox"/> See Contract Attachment #										
Service Name			Service Code			Unit Definition			Unit Rate	

Use additional sheets as necessary.

CONTRACT # \_\_\_\_\_

OAS Use Only: \_\_\_\_\_

*Input Oper./Date*

DHS-9190 9/01/2002 ALTERNATE FORMATS (LARGE PRINT, AUDIO TAPE, ETC.) WILL BE PROVIDED UPON REQUEST page \_\_\_ of \_\_\_

**DEPARTMENT OF HUMAN SERVICES  
CONTRACT AUTHORIZATION/INPUT FORM INSTRUCTIONS**

**GENERAL INSTRUCTIONS:** Program division/office shall complete this form when authorizing Contract Support Section/Field Operations Unit (CSS/FOU) to develop a contract action. The requested format for submission to FOU is electronic, although neatly typed versions will be accepted.

1. **NEW CONTRACTS** –For every new contract authorized, complete pages 1 and 2 in their entirety.
2. **AMENDMENTS/CHANGES** –For every amendment/change, complete Sections **I, II, III, IV, VII, and IX** in their entirety. Complete sections **V, VI, VIII, and X** (or portions thereof) only to reflect new and/or revised information.

**SECTION I – ACTION REQUESTED:**

**TYPE CONTRACT:** Select from drop-down box, or enter information, to indicate if contract is “Professional” or “Consultant”.

**ACTION:** Select from drop-down box, or enter information, to indicate if contract action is “New”, “Amendment”, or “Change”.

**ACTION #:** If contract action is “Amendment” or “Change”, enter number of this action. Number amendment actions consecutively beginning with 1. Number change actions consecutively beginning with 1 and separately from amendments.

**EFFECTIVE DATE:** Enter the effective date of this contract action, in the following format: MM/DD/YY.

**CONTRACT #:** Enter the number of the new contract or the contract being amended/changed.

**PURCHASE ORDER #:** Enter the number(s) of the AASIS purchase order(s) relative to this contract.

**SECTION II – CONTRACTOR INFORMATION:**

**VENDOR NUMBER:** Enter the AASIS vendor number for this contract.

**TAXPAYER/EMPLOYER IDENTIFICATION NUMBER:** Enter the nine-digit federal taxpayer identification number, employer identification number, or social security number for this contract.

**CONTRACTOR NAME:** Enter the full legal name of the contractor as it appears on their Form W-9.

**CONTRACTOR ADDRESS:** Enter the contractor’s address as it appears on the contract and in the AASIS vendor system.

**“REMIT TO” ADDRESS, if different:** Enter the address to which payments are to be mailed, if different from above. This address, too, should agree with the AASIS vendor system.

**CONTACT NAME and TITLE and PHONE:** Enter the name, title, and telephone number (include Area Code) of the contractor representative to whom correspondence from DHS should be addressed.

**SECTION III – PURPOSE OF THIS ACTION:**

Enter a clear, complete statement of the action being requested. For all new contracts, include the geographical service coverage area. For amendments, detail the increase, decrease, or change that is being made to the funding, services, unit rates, scope, legal attachments, etc. For amendments that change the service coverage area, detail the exact change being made.

**SECTION IV - AGREEMENT PERIOD:**

**AGREEMENT BEGIN DATE:** Enter the beginning date of the contract.

**AGREEMENT END DATE:** Enter the ending date of the contract.

**(DHS-9190 INSTRUCTIONS, page 1)**

**SECTION V – CONTRACT LIABILITY:**

**TOTAL COMPENSATION:** For new contracts, enter the total compensation for the full contract period (include .00 for whole dollar amounts). Compensation includes salaries, fringe and negotiated payments. The Total Compensation is exclusive of any “certified” or “other” funds that are outside the maximum contract liability. For amendments or changes, if this information is unchanged, leave blank.

**TOTAL REIMBURSABLE:** For new contracts, enter the total reimbursable expenses for the full contract period (include .00 for whole dollar amounts). Reimbursable expenses include maintenance and operations costs, travel, mileage, indirect costs, etc. The Total Reimbursable is exclusive of any “certified” or “other” funds that are outside the maximum contract liability. If no reimbursable expenses are included in the contract, enter 0.00. For amendments or changes, if this information is unchanged, leave blank.

**TOTAL LIABILITY:** For new contracts, enter the total amount of the contract liability for the full contract period (include .00 for whole dollar amounts). The Total Liability must be the sum of the Total Compensation and Total Reimbursable. For amendments or changes, if this information is unchanged, leave blank.

**SECTION VI – PROCUREMENT:**

For new contracts, check the appropriate box to indicate the type of procurement for this contract. For amendments or changes, if this information is unchanged, leave blank.

**NOTE:**

For **Request for Proposal**, attach the selection criteria.

For **Request for Qualifications**, attach the prior approval, if required.

For **Sole Source contract requiring prior approval**, attach the prior approval.

For **Sole Source by advertising of intent to award**, attach a copy of the advertisement and indicate the dates the advertisement ran.

For **Sole Source exempt by law**, cite the binding legislation on page 7 of the Form OSP-1 or reference the court order on page 7 and attach a copy of the court order.

“Intergovernmental” is defined as “state agency”.

**SECTION VII - EXCLUDED PROVIDER LIST CHECKED?** Check the appropriate box to indicate if the Excluded Provider List was checked or not.

**SECTION VIII – ADDITIONAL INSTRUCTIONS/INFORMATION:**

If necessary, enter any special instructions or information not otherwise addressed on the form that is relevant to the development of the contract action.

This would be the appropriate place to indicate the following types of information, **if applicable:**

- Why the changes were not included in the original contract (for an amendment) – *for Contract Officer’s inclusion on the Form OSP-1A, page 2*
- Language regarding the option to extend for “X” number of years – *for Contract Officer’s inclusion in the Terms and Conditions*
- Language addressing the funding availability dates of any funding that is effective for other than the entire period of the contract – *for Contract Officer’s inclusion in the Terms and Conditions*

**SECTION IX – DIVISION/OFFICE APPROVAL:**

**PROGRAM AGENCY:** Select from drop-down box to indicate the division/office authorizing the contract agency. If completing form manually, enter the appropriate two-digit code from the following options:

- |                                     |   |
|-------------------------------------|---|
| AA Aging and Adult Services         | DV Volunteerism                             |
| AS Administrative Services          | EC Child Care and Early Childhood Education |
| CC Chief Counsel                    | HS Human Services                           |
| CF Children and Family Services     | MH Mental Health Services                   |
| CO County Operations                | OS Systems and Technology                   |
| DB Services for the Blind           | DM Medical Services                         |
| DD Developmental Disabilities Svcs. | YS Youth Services                           |

**(DHS-9190 INSTRUCTIONS, page 2)**

**APPROVED BY:** Enter the name of the division/office representative authorizing this contract action.

**PHONE:** Enter the telephone number of the division/office representative authorizing this contract action (include Area Code).

**Page \_\_\_ of \_\_\_:** Enter the appropriate numbers, with this page being page 1, for ALL contract actions.

**SECTION X – FUNDING AND SERVICES:**

For new contracts, enter information for each funding source into a separate bordered box.

For amendments or changes, enter the information ONLY for those funding sources that are being changed. Enter only the NEW and/or CHANGED information AND that information necessary to identify the funding source being amended/changed. If a funding source is being deleted, enter the information for that funding source with \$0.00 funding.

**(NOTE: COMPLETE ONE BOX PER FUNDING SOURCE)**

**PROGRAM NAME:** Enter the name of the service program (ex., Therapeutic Foster Care, Counseling, Emergency Shelter, etc.). It is not necessary to repeat this information for amendment/change unless the Program Name is changing.

**FUNDING NAME:** Enter the name of the funding source (ex., Title IV-E, Medicaid, SSBG, SGR, etc.) It is not necessary to repeat this information for an amendment/change unless the Funding Name is changing.

**FROM / TO:** Enter the effective dates of the funding source. It is not necessary to repeat this information for an amendment/change unless the Funding Period is changing.

**CFDA NUMBER:** Enter the Code of Federal Domestic Assistance number for federal funding. For non-federal funding, leave blank. It is not necessary to repeat this information for an amendment/change unless the CFDA Number is changing.

**FUND, FUND CENTER, COMMIT. ITEM, COST CENTER, GEN. LEDGER, INTERN. ORDER:** Enter the AASIS codes for the Fund, Fund Center, Commitment Item, Cost Center, General Ledger number, and Internal Order. Repeat this information for an amendment/change to this funding to properly identify the funding source being amended/changed.

**FED %, STATE %, CASH %, TRUST %:** Enter the Federal, State, Cash percentages for this funding. It is not necessary to repeat this information for amendment/change unless the percentages are changing.

**CONTRACT AMOUNT:** Enter the contract amount for this funding source. This amount excludes any “certified” or “other” funds that are outside the maximum contract liability. It is not necessary to repeat this information for an amendment/change unless the Contract Amount for this funding source is changing.

**Payment Method:** Select from drop-down box, or enter information, to indicate if the reimbursement method is Actual, Negotiated Final, Fixed Rate, or Scheduled Reimbursement.

**Payment Limits:** Select from drop-down box, or enter information, to indicate if the payment limitations are Monthly, Quarterly, or Not Applicable.

**CERTIFIED AMOUNT, IF APPLICABLE:** Enter the amount and percent of any certified match for this funding source for which the contractor is responsible, if applicable. If none, leave blank. It is not necessary to repeat this information for an amendment/change unless the Certified Amount information is changing.

**SERVICES:**

The Service portion is NOT REQUIRED for those contracts that are paid by Electronic Data Systems, that are Direct Pay, or that do not identify purchased services to DHS clients in the contract. If this is the case, check the box for “Not Applicable”.

For all other contracts, the Service portion shall be completed in its entirety for all new contracts. For amendments/changes, enter only the new and/or revised information. Enter the information in the grid provided or check the box for “See Contract Attachment”. (C.O. will add the contract attachment number at the time of development.)

**(DHS-9190 INSTRUCTIONS, page 3)**

**Service Name:** Enter the full name of each service, as it is listed in the COUGAR Service Report.

**Service Code:** Enter the code for each service, as it is listed in the COUGAR Service Report.

**Unit Definition:** Enter the definition of one unit of service for each service (ex., one day, ¼ hour, 1 mile, etc.) NOTE: For SSBG-funded services, the unit definition can be found in the Social Services Block Grant Program Manual.

**Unit Rate:** Enter the unit rate for reimbursement for each service. For Actual and Scheduled Reimbursement, enter NA.

**CONTRACT #:** If there are more than three funding sources in the contract, complete additional copies of the second page as needed. Enter the contract number on each page for ALL contract actions.

**Page \_\_\_\_ of \_\_\_\_:** Enter the appropriate numbers, for ALL contract actions.

**OAS Use Only:** (To be completed by OAS) Enter the initials of the input operator and date of input.

**(DHS-9190 INSTRUCTIONS, page 4)**

Contract and Grant Disclosure and Certification Form

f-1

Failure to complete all the following information may result in a delay in obtaining a contract, lease, purchase agreement, or grant award with any Arkansas State Agency.

<b>SOCIAL SECURITY NUMBER</b>	<b>FEDERAL ID NUMBER</b>	<b>SUBCONTRACTOR:</b>	<b>SUBCONTRACTOR NAME:</b>
<b>TAXPAYER ID #:</b>	OR	<input type="checkbox"/> Yes <input type="checkbox"/> No	<b>ESTIMATED DOLLAR AMOUNT \$</b>
IS THIS FOR:			
<b>TAXPAYER ID NAME:</b>	<input type="checkbox"/> Goods?	<input type="checkbox"/> Services	<input type="checkbox"/> Both?
<b>YOUR LAST NAME:</b>	<b>FIRST NAME:</b>	<b>MI:</b>	
<b>ADDRESS:</b>			
<b>CITY:</b>	<b>STATE:</b>	<b>ZIP CODE:</b>	<b>COUNTRY:</b>

**AS A CONDITION OF OBTAINING, EXTENDING, AMENDING, OR RENEWING A CONTRACT, LEASE, PURCHASE AGREEMENT, OR GRANT AWARD WITH ANY ARKANSAS STATE AGENCY, THE FOLLOWING INFORMATION MUST BE DISCLOSED:**

**For Individuals\***

Indicate below if: you, your spouse or the brother, sister, parent, or child of you or your spouse is a current or former: Member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee:

Position Held	Mark ( <input type="checkbox"/> )		Name of Position of Job Held (senator, representative, name of board/commission, data entry, etc.)	For How Long?		What is the person(s) name and how are they related to you? (i.e., Jane Q. Public, spouse, John Q. Public, Jr., child, etc.)	
	Current	Former		From MM/YY	To MM/YY	Person's name	Relation
General Assembly							
Constitutional Officer							
State Board or Commission Member							
State Employees							

None of the above applies

**For an Entity (Business)\***

Indicate below if any of the following persons, current or former, hold any position of control or hold any ownership interest of 10% or greater in the entity: member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee, or the spouse, brother, sister, parent, or child of a member of the General Assembly, Constitutional Officer, State Board or commission Member, or State Employee. Position of control means the power to direct the purchasing policies or influence the management of the entity.

Position Held	Mark ( <input type="checkbox"/> )		Name of Position of Job Held (senator, representative, name of board/commission, data entry, etc.)	For How Long?		What is the person(s) name and how are they related to you? (i.e., Jane Q. Public, spouse, John Q. Public, Jr., child, etc.)		
	Current	Former		From MM/YY	To MM/YY	Person's name	Ownership	Position
<b>General Assembly</b>								
<b>Constitutional Officer</b>								
<b>State Board or Commission Member</b>								
<b>State Employees</b>								

None of the above applies

\* NOTE: PLEASE LIST ADDITIONAL DISCLOSURES ON SEPARATE SHEET OF PAPER IF MORE SPACE IS NEEDED

III. Contract and Grant Disclosure and Certification Form

**Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the agency.**

**As an additional condition of obtaining, extending, amending, or renewing a contract with a state agency I agree as follows:**

1. Prior to entering into any agreement with any subcontractor, prior or subsequent to the contract date, I will require the subcontractor to complete a **CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM**. Subcontractor shall mean any person or entity with whom I enter an agreement whereby I assign or otherwise delegate to the person or entity, for consideration, all, or any part, of the performance required of me under the terms of my contract with the state agency.
2. **I will include the following language as a part of any agreement with a subcontractor:**  
*Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this subcontract. The party who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the contractor.*
3. No later than ten (10) days after entering into any agreement with a subcontractor, whether prior or subsequent to the contract date, I will mail a copy of the **CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM** completed by the subcontractor and a statement containing the dollar amount of the subcontract to the state agency.

***I certify under penalty of perjury, to the best of my knowledge and belief, all of the above information is true and correct and that I agree to the subcontract disclosure conditions stated herein.***

**Signature \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_**

**Entity Contact Person \_\_\_\_\_ Title \_\_\_\_\_ Phone No. \_\_\_\_\_**

**AGENCY USE ONLY**

**Agency Number \_\_\_\_\_ Agency Name \_\_\_\_\_ Agency Contact Person \_\_\_\_\_ Contact Phone No. \_\_\_\_\_ Contract or Grant No. \_\_\_\_\_**

**FORMS AVAILABLE FROM OFFICE OF DISCLOSURE AND REVIEW (501) 682-6407**

*\* NOTE: PLEASE LIST ADDITIONAL DISCLOSURES ON SEPARATE SHEET OF PAPER IF MORE SPACE IS NEEDED*

**PAGE 2 OF 2**

## Contract and Grant Disclosure and Certification Form Instructions

**TAXPAYER ID #:** Indicate Social Security Number or Taxpayer Identification number of disclosing entity.

**SUBCONTRACTOR:** Mark the “yes” box if the disclosing entity is a **subcontractor** to the entity with which DHS is contracting. Mark the “no” box if the disclosing entity is the one with which DHS is contracting.

**SUBCONTRACTOR NAME:** Indicate subcontractor’s legal name. Also, in the space immediately below, enter the legal name and Tax Identification Number of the entity to which they are a subcontract. If the disclosing entity is **not** a subcontractor, leave blank. **Note:** If the disclosing entity is a subcontractor to the entity with which DHS is contracting, indicate the dollar amount of the subcontract in the margin of page 1 of the PCS-D.

**TAXPAYER ID NAME:** Enter the disclosing entity’s legal name if entity is the one with which DHS is contracting. If disclosing entity is a subcontractor, leave blank.

**GOODS? SERVICES? BOTH?** Mark "X" in the appropriate box to indicate that which DHS is purchasing from the disclosing entity.

**YOUR LAST NAME, FIRST NAME, M.I.:** Enter the last name, first name, and middle initial of individual completing the disclosure form.

**ADDRESS, CITY STATE, ZIP CODE, COUNTRY:** Enter the complete mailing address of the disclosing entity.

**FOR INDIVIDUALS:** This section is to be completed if disclosing entity is an individual. If the disclosing entity is a business, leave this section blank.

- Indicate with a check mark in the applicable spaces (current or former) if the individual, or the spouse, brother, sister, parent, or child of the individual or spouse holds (or has held) any of the positions listed.
- “Former” is defined as being within two years of the effective date of the contract for which disclosure is being made.
- If there are any positions disclosed, give **full explanation**, including name of position of job held, dates, person’s name, and relationship.
- **NONE OF THE ABOVE APPLIES:** Mark "X" in the box if there are no disclosures made by the individual.

**FOR AN ENTITY (BUSINESS):** This section is to be completed if the disclosing entity is a business. If the disclosing entity is an individual, leave this section blank.

- Indicate with a check mark in the applicable spaces (current or former) if any persons in control or authority of the business, or those persons’ spouse, brother, sister, parent, or child holds (or has held) any of the positions listed.
- “Former” is defined as being within two years of the effective date of the contract for which disclosure is being made.
- If there are any positions disclosed, give full explanation, including name of position of job held, dates, person’s name, % of ownership interest and position of control.
- **NONE OF THE ABOVE APPLIES:** Mark "X" in the box if there are no disclosures made by the business entity.

**SIGNATURE, TITLE, DATE, ENTITY CONTACT PERSON, TITLE, PHONE NUMBER:** (To be completed by individual completing form.) Sign, date, and enter the requested information.

**AGENCY USE ONLY:** (To be completed by Office of Administrative Services or divisional staff developing the contract or grant.) Enter the requested information.

**Note:** If the contract proposal for greater than \$10,000.00 is **NOT** competitively procured and includes contractor disclosure entries on the PCS-D, prior written approval from the Chief Fiscal officer of the State is required IF the identified entity currently holds a position of ownership of at least 10%. Prior approval of Office of State Procurement, Department of Finance and Administration is required on all contracts and grants with constitutional officers or their spouses. The DFA-approval document must be included in the proposal submitted to Contract Support Section, Contract Review Unit.

Contract/grant developer is responsible for determining:

- the PCS-D is completed, signed and included in the contract/grant
- none of the identified disclosures are prohibited by EO-98-04
- prior approval of DFA has been obtained, if applicable

**DEPARTMENT OF HUMAN SERVICES  
DATA INPUT FORM**

**CONTRACTOR** \_\_\_\_\_ **EFFECTIVE** \_\_\_\_\_  
**AGREEMENT TYPE** \_\_\_\_\_ **CONTRACT OR GRANT #** \_\_\_\_\_  
**ACTION** \_\_\_\_\_ **ACTION # (for amendment or change only)** \_\_\_\_\_  
**VENDOR #** \_\_\_\_\_ **TIN** \_\_\_\_\_ **DIV./OFC.** \_\_\_\_\_

**FUNDING AND SERVICES:**

PROGRAM NAME		FUNDING NAME			FROM	TO	CFDA NUMBER			
FUND	FUND CENTER	COMMIT. ITEM	COST CENTER	GEN. LEDGER	INTERN. ORDER	FED %	STATE %	CASH %	TRUST %	CONTRACT AMOUNT
										\$
Payment Method	Payment Limits			Certified Amount, If Applicable			\$			
<b>SERVICES</b> <input type="checkbox"/> Not Applicable <input type="checkbox"/> See Contract Attachment # _____										
Service Name		Service Code		Unit Definition			Unit Rate			

  

PROGRAM NAME		FUNDING NAME			FROM	TO	CFDA NUMBER			
FUND	FUND CENTER	COMMIT. ITEM	COST CENTER	GEN. LEDGER	INTERN. ORDER	FED %	STATE %	CASH %	TRUST %	CONTRACT AMOUNT
										\$
Payment Method	Payment Limits			Certified Amount, If Applicable			\$			
<b>SERVICES</b> <input type="checkbox"/> Not Applicable <input type="checkbox"/> See Contract Attachment # _____										
Service Name		Service Code		Unit Definition			Unit Rate			

  

PROGRAM NAME		FUNDING NAME			FROM	TO	CFDA NUMBER			
FUND	FUND CENTER	COMMIT. ITEM	COST CENTER	GEN. LEDGER	INTERN. ORDER	FED %	STATE %	CASH %	TRUST %	CONTRACT AMOUNT
										\$
Payment Method	Payment Limits			Certified Amount, If Applicable			\$			
<b>SERVICES</b> <input type="checkbox"/> Not Applicable <input type="checkbox"/> See Contract Attachment # _____										
Service Name		Service Code		Unit Definition			Unit Rate			

Use additional sheets as necessary      Page \_\_\_\_\_ of \_\_\_\_\_      OAS Use Only \_\_\_\_\_

**DEPARTMENT OF HUMAN SERVICES  
DATA INPUT FORM**

**GENERAL INSTRUCTIONS:** The program division/office shall complete the DHS-9191 for all grants except those reimbursed through the voucher system. The division/office shall also complete the DHS-9191 for those contracts they develop. NOTE: This form is NOT REQUIRED for those contracts that are paid by Electronic Data Systems or that are Direct Pay.

The following instructions apply when completing the form:

1. **NEW CONTRACTS/GRANTS**—For every new grant or contract, complete the form in its entirety.
2. **AMENDMENTS/CHANGES**—For every amendment/change that affects funding or services, complete ALL of the contractor/grantee information (through DIV./OFC. identifier). In the Funding and Services section, complete only those sections (or portions thereof) necessary to reflect new and/or revised information. If the amendment/change does NOT affect funding or services, no DHS-9191 is required.

**CONTRACTOR:** Enter the full legal name of the contractor/grantee as it appears on their Form W-9.

**EFFECTIVE DATE:** Enter the effective date of this contract/grant action.

**AGREEMENT TYPE:** Select from drop-down box, or enter information, to indicate if agreement is a “PCS contract” or a “Grant”.

**CONTRACT OR GRANT #:** Enter the number of the new contract or grant or of the contract or grant being amended/changed.

**ACTION:** Select from drop-down box, or enter information, to indicate if contract/grant action is “New”, “Amendment”, or “Change”.

**ACTION #:** If contract/grant action is “Amendment” or “Change”, enter number of this action. Number amendment actions consecutively beginning with 1. Number change actions consecutively beginning with 1 and separately from amendments.

**VENDOR:** Enter the AASIS vendor number for this contract or grant.

**TIN:** Enter the nine-digit federal taxpayer identification number, employer identification number, or social security number for this contract or grant.

**DIV./OFC.:** Select from drop-down box to indicate the division/office developing the contract/grant. If completing form manually, enter the appropriate two-digit code from the following options:

AA	Aging and Adult Services	DV	Volunteerism
AS	Administrative Services	EC	Child Care and Early Childhood Education
CC	Chief Counsel	HS	Human Services
CF	Children and Family Services	MH	Mental Health Services
CO	County Operations	OS	Systems and Technology
DB	Services for the Blind	DM	Medical Services
DD	Developmental Disabilities Svcs.	YS	Youth Services

**FUNDING AND SERVICES:**

For new contracts/grants, enter information for each funding source into a separate bordered box.

For amendments or changes, enter the information ONLY for those funding sources that are being changed. Enter only the NEW and/or CHANGED information AND that information necessary to identify the funding source being amended/changed. If a funding source is being deleted, enter the information for that funding source with \$0.00 funding.

**COMPLETE ONE BOX PER FUNDING SOURCE.**

**PROGRAM NAME:** Enter the name of the service program (ex., Therapeutic Foster Care, Counseling, Emergency Shelter, etc.). It is not necessary to repeat this information for amendment/change unless the Program Name is changing.

**FUNDING NAME:** Enter the name of the funding source (ex., Title IV-E, Medicaid, SSBG, SGR, etc.) It is not necessary to repeat this information for an amendment/change unless the Funding Name is changing.

**FROM / TO:** Enter the effective dates of the funding source. It is not necessary to repeat this information for an amendment/change unless the Funding Period is changing.

**CFDA NUMBER:** Enter the Code of Federal Domestic Assistance number for federal funding. For non-federal funding, leave blank. It is not necessary to repeat this information for an amendment/change unless the CFDA Number is changing.

**FUND, FUND CENTER, COMMIT. ITEM, COST CENTER, GEN. LEDGER, INTERN. ORDER:** Enter the AASIS codes for the Fund, Fund Center, Commitment Item, Cost Center, General Ledger number, and Internal Order. Repeat this information for an amendment/change to this funding to properly identify the funding source being amended/changed.

**FED %, STATE %, CASH %, TRUST %:** Enter the Federal, State, Cash, Trust percentages as they relate to this funding. It is not necessary to repeat this information for amendment/change unless the percentages are changing.

**CONTRACT AMOUNT:** Enter the contract/grant amount for this funding source. This amount excludes any "certified" or "other" funds that are outside the maximum contract liability. It is not necessary to repeat this information for an amendment/change unless the Contract Amount for this funding source is changing.

**Payment Method:** Select from drop-down box, or enter information, to indicate if the reimbursement method is Actual, Negotiated Final, Fixed Rate, or Scheduled Reimbursement.

**Payment Limits:** Select from drop-down box, or enter information, to indicate if the payment limitations are Monthly, Quarterly, or Not Applicable.

**CERTIFIED AMOUNT, IF APPLICABLE:** Enter the amount of any certified match for this funding source for which the contractor/grantee is responsible, if applicable. If none, leave blank. It is not necessary to repeat this information for an amendment/change unless the Certified Amount information is changing.

**SERVICES:**

**The Service portion shall be completed in its entirety for all new contracts. For amendments/changes, enter only the new and/or revised information. Enter the information in the grid provided or check the box for "See Contract Attachment" and enter the contract attachment number.**

**Service Name:** Enter the full name of each service, as it is listed in the COUGAR Service Report.

**Service Code:** Enter the code for each service, as it is listed in the COUGAR Service Report.

**Unit Definition:** Enter the definition of one unit of service for each service (ex., one day, ¼ hour, 1 mile, etc.)  
NOTE: For SSBG-funded services, the unit definition can be found in the Social Services Block Grant Program Manual.

**Unit Rate:** Enter the unit rate for reimbursement for each service. For Actual and Scheduled Reimbursement, enter NA.

**(DHS-9191 Instructions, page 2)**

**Page \_\_\_\_ of \_\_\_\_:** Enter the appropriate numbers, for ALL contract actions. If there are more than three funding sources in the contract, complete additional pages as needed. **Enter the contract or grant number where requested at the top on each page for ALL contract actions.**

**OAS Use Only:** (To be completed by OAS) Enter the initials of the input operator and date of input.

**ATTACHMENT # \_\_\_\_\_**  
**Funding Availability**

All funding within this contract is available for the entire time period of the contract except as indicated below:

<u>FUNDING SOURCE</u>	<u>AMOUNT</u>	<u>BEGINNING AND ENDING DATES</u>

**ARKANSAS DEPARTMENT OF HUMAN SERVICES  
GRANT AGREEMENT**

**Grant Number** \_\_\_\_\_ is entered into between the State of Arkansas, **Department of Human Services**, \_\_\_\_\_ hereinafter referred to as the Department and the Recipient as indicated below.

**I. RECIPIENT INFORMATION:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Taxpayer / Employer Identification Number: \_\_\_\_\_

AASIS Vendor # \_\_\_\_\_ Purchase Order #(s) \_\_\_\_\_

hereinafter referred to as the Recipient.

Recipient Contact Name, Title, & Telephone: \_\_\_\_\_

Division/Office Contact Name, Title, & Telephone: \_\_\_\_\_

CHECKED EXCLUDED PROVIDER LISTS:  YES  NO

**II. GRANT PERIOD:**

This agreement will begin on \_\_\_\_\_ and will end on \_\_\_\_\_.

In no event shall the initial term of the grant extend beyond the end of the current biennial period unless the General Assembly, prior to the expiration of the biennial period, makes an appropriation for such purpose.

**III. AMOUNT AND SOURCE OF FUNDS:**

Regardless of any other provision of this grant, or any costs or obligations of the Recipient, the liability of payment by the Department to the Recipient under this grant shall be subject to the limits specified below:

FUND	FUND CENTER	COMM. ITEM	COST CENT.	GENERAL LEDGER	INTERNAL ORDER	METHOD OF PAYMENT	AMOUNT

Total Grant Amount: \$ \_\_\_\_\_

**IV. OBJECTIVE AND SCOPE:**

CFDA Number \_\_\_\_\_ Title of Grant: \_\_\_\_\_

Grant Status:  Discretionary;  Discretionary, but exempt  Non-discretionary  
If Discretionary but exempt, indicate reason for exemption \_\_\_\_\_

Purpose of Grant: \_\_\_\_\_

All parties agree that following attachments contain the objective and scope and are hereby made a part of this grant. These attachments may not be altered or modified without a written amendment signed by all parties.

Attachment No.	Description

**V. CANCELLATION:**

- A. The Department and the Recipient agree that either party may cancel this agreement unilaterally at any time by giving the other party thirty (30) calendar days written notice, and delivering notice of cancellation either in person or by certified mail, return receipt requested, restricted delivery. Cancellation notices to the Department of Human Services must be sent to the DHS Director or the authorized representative designated herein.
- B. The Department may cancel this agreement pursuant to DHS Policy No. 1088, upon giving the other party thirty (30) days written notice, and delivering notice of cancellation either in person or by certified mail, return receipt requested, restricted delivery.

**VI. PROGRAM COMPLIANCE:**

- A. **STATE AND FEDERAL LAWS:** Performance of this grant by the Recipient and the Department must comply with state and federal laws and regulations. If any statute or regulation is enacted which requires changes in this grant, the Recipient will receive notification of the required changes. This grant shall then be amended according to the procedures outlined in Section X.
- B. **FORCE MAJEURE:** Neither party will be held responsible for any delay or failure to perform any part of this grant when such delay or failure results from fire, flood, epidemic, war or insurrection, unusually severe weather, or the legal acts of public authorities.
- C. **COMPLIANCE WITH NONDISCRIMINATION LAWS:** The Recipient will comply with all applicable provisions of the following federal regulations related to nondiscrimination, both in service delivery to clients and in employment, including, but not limited to, the following:
  - Title 45 Code of Federal Regulations:
    - Part 80 (Nondiscrimination on the Basis of Race or Sex)
    - Part 84 (Nondiscrimination on the Basis of Handicap)
    - Part 90 (Nondiscrimination on the Basis of Age)
  - Americans with Disabilities Act of 1990, U.S.C. Section 12101 et. seq.
  - Title 28 Code of Federal Regulations:
    - Part 35 (Nondiscrimination on the Basis of Disability in State and Local Government Services)
  - Title 41 Code of Federal Regulations:
    - Part 60-741 (OFCCP: Affirmative Action Regulations on Handicapped Workers)

The Department will furnish a copy of these regulations to the Recipient upon request.
- D. **CERTIFICATION REGARDING LOBBYING:** The Recipient will comply with Public Law 101-121, Section 319 (Section 1352 of Title 31 U.S.C.) by certifying that appropriated federal funds have not been or will not be used to pay any person to influence or attempt to influence a federal official/employee in connection with the awarding of any federal contract, grant, loan or cooperative agreement for an award in excess of \$100,000.00. This certification is included as Attachment \_\_\_\_\_ to this grant.

If the Recipient has paid or will pay for lobbying using funds other than appropriated federal funds, Standard Form-LLL (Disclosure of Lobbying Activities) shall be completed and included as Attachment \_\_\_\_\_ to this grant.

**E. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION:** The Recipient, as a lower tier recipient of federal funds, will comply with Executive Order 12549 (Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions). By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

1. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
2. where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

**F. LEGISLATIVE REVIEW** Act 1032 of 1999 specifies that no state agency shall award any discretionary grant that exceeds \$10,000.00 prior to review by the Arkansas Legislative Council or the Joint Budget Committee. If the state agency determines that an emergency exists the state agency may award the grant prior to review, and shall immediately notify the Legislative Council or Joint Budget Committee as to the facts constituting the emergency.

All non-discretionary grants are exempt from review.

Certain discretionary grants are exempt from review. These include:

- grants to another governmental entity such as a state agency, public educational institution, federal governmental entity or body of a local government
- disaster relief grants
- grants identified by the Arkansas Legislative Council to be exempt
- grants deemed to contain confidential information that would be in violation of disclosure laws
- any scholarship or financial assistance award to or for a post-secondary student

## **VII. PROGRAM OPERATION:**

- A. PURPOSE AND SCOPE:** The Recipient shall furnish a description of the purpose and scope of this grant as specified in Attachment \_\_\_\_\_.
- B. STATISTICAL AND FINANCIAL INFORMATION:** The Recipient shall certify and compile statistical and financial information. Financial information shall be maintained in accordance with generally accepted accounting principles.
- C. SUBCONTRACTING:** The Recipient shall be responsible for the performance of all obligations under this grant, including subcontracted services. The Recipient shall notify all subcontractors that the Department is not responsible for payments to the subcontractor and that all reimbursement for subcontracted services will be made by the Recipient.

## **VIII. INFORMATION AND RECORDS:**

- A. ACCESS TO RECORDS:** The Recipient will grant access to records upon request by duly authorized representatives of state or federal government entities. Access will be given to any books, documents, papers or records of the Recipient which are related to any services performed under the grant.; The Recipient additionally consents that all sub-grants will contain adequate language to allow the same guaranteed access to the records of sub-grantees.

- B. **RECORD RETENTION**: The Recipient will retain all books, records, and other documents relating to expenditures and services rendered under this grant for a period of five (5) years from the date this grant expires, or if an audit is pending at the end of the five-year period, until resolution of the audit. Department access to all books, records, and other documents will be according to the procedures outlined in Section VIII. A. of this grant.
- C. **CONFIDENTIALITY OF CLIENT RECORDS**: The Recipient will maintain the confidentiality of all client records. This restriction does not apply to disclosures made with the informed, written consent of the client, or if the client is not a competent adult or is a minor, with such consent of the client's parent, guardian or legal representative.

**IX. FISCAL PRACTICES**

- A. **CLAIMS**: Only those claims for costs and services specifically authorized under this grant will be allowed by the Department. Any work performed, material furnished, or costs incurred not covered by this grant shall be solely the responsibility of the Recipient.
- B. **NON-DUPLICATION OF PAYMENT**: Services provided or costs incurred under this grant shall not be allocated to or included as a cost of any other State or Federally financed program unless such partial payment is specified in Attachment \_\_\_\_\_, and the Department gives written consent to this arrangement.
- C. **BILLING**: Billing under this agreement will be in accordance with established Department procedures. Payment method will be as stated in Section III of this agreement.
- D. **LIMITATION OF THE DEPARTMENT'S OBLIGATION TO PAY**: The Department is not obligated to make payment under this grant if the Department does not receive sufficient monies from the funding source(s) designated in this grant to fund said obligations and other obligations of the Department, or is not given legal authority from the Arkansas Legislature to expend these funds. The Department is not obligated to make payment if sufficient state or local matching money is not available at the time the bill is presented for payment.
- E. **PAYMENT FROM DEPARTMENT CONSIDERED PAYMENT IN FULL**: Payment received from the Department under this grant shall be payment in full for all services and/or costs covered by the payment. No fee or other charge shall be made against a client or a third party for these services and/or costs. This paragraph does not preclude allocation of costs among two or more funding sources, or payment of portions of a service and/or cost under different funding sources, so long as there is no duplication of payment.
- F. **AUDIT REQUIREMENT**: Provider shall comply with the DHS audit requirements as outlined in Arkansas Department of Human Services "Audit Guidelines". Copies may be obtained from:

Arkansas Department of Human Services  
Office of Chief Counsel Audit Section  
P.O. Box 1437 - Slot S270  
Little Rock, Arkansas 72203-1437

- G. **DEPARTMENTAL RECOVERY OF FUNDS**: The Department shall seek to recover funds not utilized in accordance with the terms and conditions of this grant.

**X. AMENDMENT**:

Any amendment to this grant shall be valid only when in writing, and when duly signed by the authorized representative(s) of the Recipient and the Department of Human Services. Recipient and Department acknowledge that no verbal or written representations, other than those contained herein, have been made as an inducement to enter into this agreement and that this writing constitutes the entire agreement.

**XI. CERTIFICATION AND SIGNATURE:**

A. **RECIPIENT CERTIFICATION OF DOCUMENTATION:** The Recipient certifies that all documentation presented to obtain this grant is true and complete. The Recipient agrees to notify the Department of any changes in this documentation except when the Department has given specific written permission to waive such notification.

B. **SIGNATURES:**

**Signature of Grant Recipient Authorized Representative**

\_\_\_\_\_  
Signature of Recipient Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Recipient Authorized Representative

\_\_\_\_\_  
Title

In signing this document, I attest that I am authorized by the board of Directors or other governing authority to sign this grant on behalf of the Recipient. This grant is effective on date specified on Page 1, but no earlier than the date signed by the last signing party

**Signature of DHS Program Agency Authorized Representative**

\_\_\_\_\_  
Signature of DHS Program Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of DHS Authorized Representative

\_\_\_\_\_  
Title

In signing this document, I attest I am exercising appropriate fiduciary authority in the commitment of available resources to achieve program agency objectives.

Program Agency

Contact Person: \_\_\_\_\_ Date: \_\_\_\_\_ Phone: \_\_\_\_\_

Grant Agreement Developer: \_\_\_\_\_ Date: \_\_\_\_\_ Phone: \_\_\_\_\_

Reviewing Official: \_\_\_\_\_ Date: \_\_\_\_\_

Resolution Official: \_\_\_\_\_ Date: \_\_\_\_\_

CSS Certification

Official \_\_\_\_\_ Date: \_\_\_\_\_

# ARKANSAS DEPARTMENT OF HUMAN SERVICES GRANT AGREEMENT -- INSTRUCTIONS

Purpose: The Grant Agreement form DHS 9600 is a legal agreement between the Department of Human Services (DHS) and a public or private agency or individual for the purpose of awarding a grant.

Grant Number: Enter the grant number assigned by the authorized funding program agency. The grant number should be unique to each agreement for tracking purposes.

Department: Enter the name of the DHS Division or Office awarding the grant agreement.

## A. Section I - Recipient Information

Name: Enter the full legal name of the grant recipient. The name must be consistent with IRS Form W-9 signed by the recipient and the AASIS vendor system.

Address: Enter the mailing address of the grant recipient in which payments are to be forwarded. The address must be consistent with the AASIS vendor system.

City/State/Zip: Enter City, State and zip code of the grant recipient mailing address. The address must be consistent with the AASIS vendor system.

Taxpayer / Employer Identification Number: Enter the grantee's nine-digit taxpayer identification number (employer or social security number), as applicable.

AASIS Vendor #: Enter the AASIS vendor number that corresponds to the name and address on the grant.

Purchase Order #(s): Enter the AASIS purchase order number(s) that apply to this grant.

Recipient Contact Name, Title, & Telephone: Enter the name, title, and telephone number of the recipient's contact during business hours.

Division/Office Contact Name, Title, & Telephone: Enter the name, title, and telephone number of the division/office representative to contact regarding the grant proposal. The contact person should be available to answer questions or make corrections as necessary.

Checked Excluded Provider Lists: Enter an **X** in the appropriate box to indicate if the excluded provider lists were checked.

## Section II - Grant Period

Enter the month, day, and year the grant agreement will begin and end.

## B. Section III -Amount and Source of Funds

**NOTE:** If there are three or less funding sources, list them all in Section III. If there are more than three funding sources, Indicate "See Attachment" and list all of the funding sources on an attachment.

FUND, FUND CENTER, COMM. ITEM, COST CENT., GENERAL LEDGER, INTERNAL ORDER: Enter the appropriate code identifying the Fund, Fund Center, Commitment Item, Cost Center, General Ledger, and Internal Order for the funding listed.

Method of Payment: Enter the method of payment that applies to the funding listed. Methods of payment include:

Actual Cost  
Fixed Rate

Negotiated Final Rate  
Scheduled Reimbursement (identify if Monthly, Quarterly, etc.)

Amount: Enter the total funding amount of the grant agreement that applies to the funding listed. Whole dollar amounts must include **.00**.

Total Grant Amount: Enter the total of all funds included in the grant.

## **Section IV - Objective and Scope**

CFDA Number: Enter the Catalog of Federal Domestic Assistance number.

Title of Grant: Enter the title of the fund source/program for this grant agreement.

Grant Status: Place an **X** indicating if the grant is Discretionary, Discretionary but Exempt, or Non-discretionary. If grant is Discretionary but Exempt, enter the number from the list below that corresponds to the reason for exemption:

- 1 Grant Total is \$10,000.00 or less
- 2 Federal, State, Local Governmental Entity or Public Educational institution
- 3 Disaster Relief Grant
- 4 Exempted by Legislative Council or Joint Budget committee
- 5 Contains confidential information that violates disclosure laws
- 6 Scholarship or financial assistance award to a post-secondary student

Purpose of Grant: Give a brief statement of the purpose of this grant.

Attachment No: List the attachment number of all legal attachments included in the agreement. Attachments must be numbered in sequential order and consistent format.

Description: Provide the name or description of each legal attachment listed.

## **Section VI – Program Compliance**

D. Certification Regarding Lobbying: Enter the attachment number if a DHS 9350 and/or Form LLL is included with the grant. If none, enter "NA".

## **Section VII - Program Operation**

A. Purpose and Scope: Enter the number of the attachment that provides the purpose and scope of grant, if applicable. If none, enter "NA".

## **Section IX – Fiscal Practices**

B. Non-Duplication of Payment: Enter the attachment number if approval from the Department has been given to allocate costs incurred under this grant to another program. If none, enter "NA".

## **Section XII – Certification and Signature**

Signature of Recipient: The original signature of the grant recipient representative and date should be shown. Also type or print the signatory name and title.

Signature of DHS Program Division/Office: The original signature of the DHS Division/Office Director or authorized representative and date should be shown. Also type or print the signatory name and title.

Technical Certification of Administrative Compliance:

The original signature of the Program Agency contact person, date, and phone number shall be shown.

The original signature of the Grant Agreement Developer, date, and phone number shall be shown.

The original signature of the compliance reviewer (as the Reviewing Official) and date shall be shown.

The original signature of the individual performing and verifying resolution (as the Resolution Official) and date shall be shown.

The original signature of the DHS Director or Authorized Representative (as the OAS Certification Official) and date shall be shown.

## GRANT CHECKLIST

**Purpose:** This form is to be used as a **tool** by the grant developer to ensure completeness of grant before submittal for signature. **The form is to be retained in the grant developer's file and not submitted with the grant.**

**Instructions:** Enter an "X" in the space provided for each checklist item included in the proposal. If the item is not applicable, enter "NA" in the space provided.

1. \_\_\_\_\_ DHS-9191, Data Input Form
2. \_\_\_\_\_ DHS-9600, Grant Agreement
3. \_\_\_\_\_ DHS-9601, Grant Agreement Amendment
4. \_\_\_\_\_ DHS-9350, Certification Regarding Lobbying
5. \_\_\_\_\_ Itemization of expenses
6. \_\_\_\_\_ Contract and Grant Disclosure and Certification
7. \_\_\_\_\_ Provider Audit Sign Off Sheet (PASOS) indicating "current"
8. \_\_\_\_\_ Out-of-state Contractor Certificate of Authority
9. \_\_\_\_\_ DHS-9356, Independent Contractor Checklist
10. \_\_\_\_\_ DHS-9400, Matching Agreement
11. \_\_\_\_\_ Other attachments to the DHS-9600



# ARKANSAS DEPARTMENT OF HUMAN SERVICES GRANT AMENDMENT INSTRUCTIONS

Amendment Number: Enter the amendment number of this action. Amendments must be numbered consecutively beginning with one (1).

Effective Date: Enter the date the amendment action is to become effective. The effective date cannot precede the date of the last signing party.

Agreement Number: Enter the agreement/grant number assigned by the authorized funding program agency. The agreement number should be unique to each agreement for tracking purposes. This number must be consistent with the original agreement.

Department: Enter the name of the DHS Division or Office awarding the grant agreement. This name must be consistent with the original agreement.

and (Recipient Name): Enter the full legal name of the agreement/grant recipient as indicated on the original agreement.

Beginning Date: Enter the month, day, and year the original agreement began.

Ending Date: Enter the month, day, and year the original agreement will end.

Section II: Place an **x** in box if the action changes the end date of the agreement. Enter the new end date of agreement.

Section III: Place an **x** in box if the action changes the Liability Amount or Source of Funds.

If the action changes the total liability amount, enter the Current Liability of the agreement in the space provided. In the space entitled Amended Amount, enter the amount of change and a (+) if amendment is to increase funding or (-) if amendment is to decrease funding. Enter the new Revised Total Liability amount. Whole dollar amounts must include **.00**. If there is no change in the total liability amount, leave all three spaces blank.

If the action changes the fund source, enter "A" for Add, "R" for Revise or "D" for Delete under Action column. Enter the revised information as it applies to each column. If there is no change in fund source information, leave blank.

Section IV: Place an **x** in box if the action is to add or revise legal attachments included in the agreement. Enter "A" for Add, "R" for Revise or "D" for Delete under Action column. Enter the revised information as it applies to each column.

Section \_\_\_\_\_: Place an **x** in box if the action changes information in any other section of the agreement. Also specify the section to be amended and clearly identify what changes are to be made.

Checked Excluded Provider Lists: Enter an X in the box to indicate if the excluded provider lists were checked.

Grant Status: Place an **X** indicating if the grant is Discretionary, Discretionary but Exempt, or Non-discretionary. If grant is Discretionary but Exempt, enter the number from the list below that corresponds to the reason for exemption:

- 7 Grant Total is \$10,000.00 or less
- 8 Federal, State, Local Governmental Entity or Public Educational institution
- 9 Disaster Relief Grant
- 10 Exempted by Legislative Council or Joint Budget committee
- 11 Contains confidential information that violates disclosure laws
- 12 Scholarship or financial assistance award to a post-secondary student

Signature of Recipient: The original signature of the recipient representative, date, and title shall be shown.

Signature of DHS Program Division/Office: The original signature of the DHS Division/Office Director or authorized representative, date, and title shall be shown.

Technical Certification of Administrative Compliance: The original signature of the Program Agency Contact Person, date, and phone number shall be shown.

The original signature of the Amendment Developer, date, and phone number shall be shown.

The original signature of the compliance reviewer (as the Reviewing Official) and date shall be shown.

The original signature of the individual performing and verifying resolution (as the Resolution Official) and date shall be shown.

The original signature of the DHS Director or Authorized Representative (as the OAS Certification Official) and date shall be shown.

**ARKANSAS DEPARTMENT OF HUMAN SERVICES  
INDEPENDENT CONTRACTOR CHECKLIST**

Contractor \_\_\_\_\_

Contract Period \_\_\_\_\_ Division \_\_\_\_\_

Originator \_\_\_\_\_ Date \_\_\_\_\_

The following checklist is designed to assist the Department of Human Services (DHS) in determining independent contractor status in compliance with Internal Revenue Service requirements. The checklist shall be completed by the program person prior to initiating a contract. An affirmative answer to any of the twenty-four questions in Section A may be an indication of a problem. Affirmative answers to questions in Section B normally are indications of independent contractor status. The checklist is intended to serve as a general guide. Its use will not guarantee 100% determination of independent contractor status.

**Section A:**

**YES NO**

- |     |   |                          |                          |
|-----|---|--------------------------|--------------------------|
| 1.  | Does DHS require that the contractor comply with instructions about when, where and how the work is to be done (other than performance standards and specifications)? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2.  | Does DHS provide training to the contractor that enables the contractor to perform the job in a particular method or manner?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 3.  | Does DHS provide the same training to DHS employees?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 4.  | Are the services provided by the contractor an integral part of DHS' operation?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 5.  | Are other workers who are DHS employees providing the same service?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 6.  | Will the services have to be rendered personally by the contractor?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 7.  | Does DHS hire, supervise or pay workers or support staff to help the contractor on the job?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 8.  | Does DHS supply the contractor with dedicated office space?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 9.  | Is there a continuing relationship between the contractor as a worker and DHS for whom the services will be performed?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. | Does DHS set the work schedule (time, task, personnel)?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 11. | Is the contractor required to devote full time to DHS for performance of services?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 12. | Is the work performed at the place of business of DHS or at specific places designated by DHS?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 13. | Does DHS direct the sequence in which the work must be done?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 14. | Are regular oral and written reports required to be submitted by the contractor?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 15. | Are all working files, created or used by the contractor, the property of DHS?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 16. | Is the method of payment hourly, weekly, or monthly (rather than by unit of service or by the job)?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 17. | Are business and/or travel expenses reimbursed separately?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 18. | Does DHS furnish tools and materials used by the contractor?  | <input type="checkbox"/> | <input type="checkbox"/> |

DHS-9356	Alternate formats (large print, audio tape, etc.) will be provided upon request.	Page 1 of 2
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**Section A: (continued)**

**YES NO**

- 19. Does the contract require little or no investment by the contractor in equipment or facilities used to provide services?
- 20. Does the contract prevent the contractor from realizing either a loss or profit on the work?
- 21. Does the contractor perform services exclusively for DHS rather than work for a number of organizations at the same time?
- 22. Does the contractor make services available only to DHS and not to the general public?
- 23. Can DHS dismiss the contractor for reason other than non-performance of contract?
- 24. Can the contractor terminate the relationship with DHS without incurring a liability for failure to complete the job?

Tabulation of the twenty-four questions above: Total **YES** \_\_\_\_\_ Total **NO** \_\_\_\_\_ **YES** Percentage \_\_\_\_\_

**Section B:**

- 25. Will the written agreement between DHS and the contractor clearly indicate the contractor's status as a contractor rather than as an employee of DHS?
- 26. Does the contractor understand the obligation to report all payments from DHS on Schedules C and SE of IRS Form 1040, Form 1120, or Form 10657 (appropriate form varies for individuals, corporations, and partnerships)?
- 27. Does the contractor understand the obligation to arrange for his or her own liability, disability and health insurance, and to buy a Workers' Compensation insurance policy for any workers hired by the contractor as assistants?
- 28. Has DHS explained to the contractor that an independent contractor has the right to take contracts or jobs with other organizations outside DHS?
- 29. Will the contractor incur expenses at his or her business location for the DHS contract?

Tabulation of the five questions above: Total **YES** \_\_\_\_\_ Total **NO** \_\_\_\_\_ **YES** Percentage \_\_\_\_\_

Business Name \_\_\_\_\_

Taxpayer Identification Number \_\_\_\_\_

Address \_\_\_\_\_

Telephone Number \_\_\_\_\_

**CONCLUSION:**

In my opinion, this contract as written will be:

SATISFACTORY \_\_\_\_\_  
(Originator's Signature) (Date)

UNSATISFACTORY \_\_\_\_\_  
(Originator's Signature) (Date)

DHS-9356 Alternate formats (large print, audio tape, etc.) will be provided upon request. Page 2 of 2

## DHS-9356 Instructions

### Purpose

The Independent Contractor Checklist (DHS-9356) is designed to assist the Department of Human Services (DHS) in determining independent contractor status in compliance with Internal Revenue Service requirements. An affirmative answer to any of the twenty-four questions in Section A may be an indication of a problem. Affirmative answers to questions in Section B normally are indications of independent contractor status. The checklist is intended to serve as a general guide. Its use will not guarantee 100% determination of independent contractor status.

### Completion

The DHS division or office shall complete the checklist only for contracts with individuals doing business as sole proprietors, and the checklist shall be completed prior to initiating the contract. The program person initiating the contract will complete the form.

**Contractor:** Enter the complete legal name of the contractor.

**Contract Period:** Enter the beginning and ending dates of the contract.

**Division:** Enter the division/office originating the contract.

**Originator:** Enter the name of the program person originating the contract.

**Date:** Enter the date the program person completes the form.

#### Section A:

**Questions:** Answer each of the twenty-four questions by entering an "X" in the "YES" or "NO" boxes.

**Tabulation:** Enter the total number of "YES" answers and the total number of "NO" answers in the appropriate spaces. Divide the number of "YES" answers by 24 and enter result, as a percentage, in the appropriate space (i.e., if there were twelve "YES" answers, enter 50%, not .5).

#### Section B.

**Questions:** Answer each of the twenty-four questions by entering an "X" in the "YES" or "NO" boxes.

**Tabulation:** Enter the total number of "YES" answers and the total number of "NO" answers in the appropriate spaces. Divide the number of "YES" answers by 5 and enter result, as a percentage, in the appropriate space (i.e., if there were four "YES" answers, enter 80%, not .8).

**Business name:** Enter the complete legal name of the contractor.

**Taxpayer Identification Number:** Enter the contractor's nine-digit federal taxpayer identification number, either the employer identification number or the social security number, as appropriate.

**Address:** Enter the complete address of the contractor.

**Phone Number:** Enter contractor's business ten-digit telephone number.

**Conclusion:** The originator should sign on the appropriate line. There is no hard rule in determining compliance, but generally, if the "YES" percentage in Section A is greater than 50%, it is likely that the contractor is not sufficiently independent to satisfy Internal Revenue Service requirements, and the contract will be Unsatisfactory. In Section B, a percentage of less than 50% will draw the same conclusion.

### Routing

A completed Form DHS-9356 must be included in each contract proposal with individuals doing business as sole proprietors submitted for review and approval.

**Performance Based Contracting Certification**  
**ARKANSAS DEPARTMENT OF HUMAN SERVICES**

Contract Number \_\_\_\_\_

Contractor Name \_\_\_\_\_

Amendment # \_\_\_\_\_ Amendment Eff. Date \_\_\_\_\_

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Pursuant to DHS Policy 1066, I hereby certify to the following:

This contract is identical to an existing contract which has received OCC approval except as to contractor,

**AND**

The existing approved performance terms are satisfactory and have accomplished the outcomes desired

**OR**

This amendment changes only quantity, price, or duration

**AND**

The existing performance terms have previously been approved by OCC, are satisfactory, and have accomplished the outcomes desired.

---

**Signature/Title**

---

**Date**

## PERFORMANCE BASED CONTRACTING

Pursuant to Ark. Code Ann. 19-4-1716 et. seq., the selected contractor will have to comply with performance based contract standards. Following are the performance based contracting standards that will be a part of the contract and will have to be complied with for acceptable performance to occur under the contract.

- I. The contract must comply with all statutes, regulations, codes, ordinances, licensure or certification requirements applicable to the contractor or to the contractor's agents and employees and to the subject matter of the contract. Failure to comply shall be deemed inadequate performance.
- II. The contractor agrees to hold the contracting Division/Office harmless and to indemnify the contracting Division/Office for any additional costs of alternatively accomplishing the goals of the contract, as well as any liability, including liability for costs or fees, which the contracting Division/Office may sustain as a result of the contractor's performance or lack of performance.
- III. During the term of the contract, the division/office will complete sufficient performance evaluation(s) to determine if the contractor's performance is **satisfactory** or **unsatisfactory**. As part of the end-of-year closeout procedures, the division/office will review the contractor's performance, notify the contractor of the results of the performance evaluations, impose remedies for inadequate performance, and report to Office of Administrative Services (OAS), Contract Support Section (CSS), any that have performed at an **unsatisfactory** level and the ultimate remedy. The division/office will also report to OAS/CSS that the performance of all remaining contracts was **satisfactory**.
- IV. The contract program deliverables and performance indicators to be performed by the contractor are:

**(A) Goal:**

**Performance Indicator:**

- 1.
- 2.

**Acceptable Performance:**

**One or more of the following remedies will be imposed for unacceptable performance:**

**(B) Goal:**

**Performance Indicator:**

- 1.
- 2.

**Acceptable Performance:**

**One or more of the following remedies will be imposed for unacceptable performance:**

## PROFESSIONAL/CONSULTANT SERVICES CONTRACT CHECKLIST

**Purpose:** This form is to be used as a **tool** by the contract developer to ensure completeness of contract before submittal for signature. **The form is to be retained in the contract developer's file, and not submitted with the contract.**

**Instructions:** Enter an "X" in the space provided for each checklist included in the proposal. If the item is not applicable, enter "NA" in the space provided.

- \_\_\_\_\_ DHS-9190, Contract Authorization/Input Form
- \_\_\_\_\_ DHS-9191, Data Input Form
- \_\_\_\_\_ Form OSP-1, Professional/Consultant Services Contract
- \_\_\_\_\_ Form OSP-1A, Amendment to Professional/Consultant Services Contract
- \_\_\_\_\_ Terms and Conditions
- \_\_\_\_\_ DHS-9350, Certification Regarding Lobbying
- \_\_\_\_\_ Performance Indicators
  - a. \_\_\_\_\_ Performance Based Contracting Certification
  - b. \_\_\_\_\_ OCC approval
- \_\_\_\_\_ Itemized listing of expenses
- \_\_\_\_\_ Contract Fee/Rate Schedule
- \_\_\_\_\_ DHS-9400, Match Agreement
- \_\_\_\_\_ Contract and Grant Disclosure and Certification on contractor
- \_\_\_\_\_ Contract and Grant Disclosure and Certification on subcontractor(s), incl. dollar amount of subcontract(s)
- \_\_\_\_\_ Form W-9, Request for Taxpayer Identification Number and Certification
- \_\_\_\_\_ Provider Audit Sign Off Sheet (PASOS) indicating "current"
- \_\_\_\_\_ Out-of-state contractor Certificate of Authority
- \_\_\_\_\_ DHS-9356, Independent Contractor Checklist
- \_\_\_\_\_ Suspension of the Rules letter
- \_\_\_\_\_ Construction Contract Justification form
- \_\_\_\_\_ Construction Amendment Justification form
- \_\_\_\_\_ Approval by DHS Central Support Unit and State Building Services for construction-related contracts
- \_\_\_\_\_ Approval by DHS Office of Systems & Technology and Department of Information Systems for computer-related services contracts
- \_\_\_\_\_ Approval by DHS Office of Chief Counsel and State Attorney General's Office for legal services contracts
- \_\_\_\_\_ DHS-1951, Reimbursement Rate Increase Approval Form
- \_\_\_\_\_ Other attachments to the Form OSP-1 or Form OSP-1A

# STATE OF ARKANSAS PROFESSIONAL/CONSULTANT SERVICES CONTRACT

CONTRACT #: \_\_\_\_\_ PURCHASE ORDER #(S): \_\_\_\_\_

VENDOR #: \_\_\_\_\_ FEDERAL I.D OR SS #: \_\_\_\_\_

What was the method of procurement chosen? Check appropriate box below:

SBS Criteria() Request for Proposal() Competitive Bid() Sole Source()  
Emergency() Request for Qualifications() Intergovernmental() Other()

SOLE SOURCE REQUIRES EXPLICIT JUSTIFICATION IN MEMO ADDRESSED TO DIRECTOR OF STATE PROCUREMENT.

**1. DATES, PARTIES:**

The term of this agreement shall begin on \_\_\_\_\_ and shall end on \_\_\_\_\_ .

State of Arkansas is hereinafter referred to as the agency and vendor is herein after referred to as the Contractor.

AGENCY NUMBER/NAME: \_\_\_\_\_

AGENCY NUMBER/NAME: \_\_\_\_\_

CONTRACTOR NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

**2. CALCULATIONS OF COMPENSATION:**

For work to be accomplished under this agreement, the Contractor agrees to provide the personnel at the rates scheduled for each level of consulting personnel as listed herein. Calculations of compensation and reimbursable expenses shall only be listed in this section. If additional space is required, a continuation sheet may be used as an attachment.

LEVEL OF PERSONNEL	NUMBER	COMPENSATION RATE	TOTAL FOR LEVEL

Total compensation exclusive of expense reimbursement \$ \_\_\_\_\_

REIMBURSABLE EXPENSES ITEM (Specify)	ESTIMATED	TOTAL

Total reimbursable expense \$ \_\_\_\_\_

Total compensation inclusive of expense reimbursement \$ \_\_\_\_\_

**STATE OF ARKANSAS  
PROFESSIONAL/CONSULTANT SERVICES CONTRACT**

**3. SOURCE OF FUNDS:**

**COMPLETE APPROPRIATE BOX(S) BELOW:**

FUND	BUSINESS AREA	FUND	COMMITMENT ITEM	% FEDERAL FUND	% STATE FUND	% CASH FUND	% TRUST FUND	Line & Column Totals
<b>TOTAL</b> % Entries above must be % of total funds, enter column totals, column totals should sum to 100%								

Source of Federal Grants Funds \_\_\_\_\_ OTHER: \_\_\_\_\_

Source of Cash Funds \_\_\_\_\_  
**MUST BE SPECIFIC** (i.e. fees, tuition, agricultural sales, bond proceeds, donations, etc.)

**4. RENDERING OF COMPENSATION**

The method(s) of rendering compensation and/or evaluation of satisfactory achievement toward Attainment of the agreement listed herein is as follows or in attachment no. \_\_\_\_\_ to this agreement.

\_\_\_\_\_  
 \_\_\_\_\_

**5. OBJECTIVES AND SCOPE**

A. Description of services to be provided. (DO NOT USE "SEE ATTACHED")

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

B. The Agency and Contractor agree that the objective and scope of this agreement are as described herein or by attachments, if so noted

\_\_\_\_\_  
 \_\_\_\_\_

Attachments No. \_\_\_\_\_

**6. AGENCY AGREES TO MAKE AVAILABLE ADVICE, COUNSEL, DATA AND PERSONNEL ETC., DESCRIBED IMMEDIATELY BELOW OR IN ATTACHMENT NO. ( ) TO THIS AGREEMENT.**

\_\_\_\_\_

**STATE OF ARKANSAS  
PROFESSIONAL/CONSULTANT SERVICES CONTRACT**

7. **HAS THE CONTRACTOR OR EMPLOYEE OF THE CONTRACTOR PERFORMED ANY SERVICES UNDER THE AUTHORITY OF A PURCHASE ORDER OR ANY OTHER METHOD OF PROCUREMENT DURING THE CURRENT FISCAL YEAR? IF YES, EXPLAIN.** \_\_\_\_\_  
\_\_\_\_\_

8. **THE AGENCY REPRESENTATIVE COORDINATING THE WORK OF THIS CONTRACTOR WILL BE:**

\_\_\_\_\_ (NAME) \_\_\_\_\_ (TITLE) \_\_\_\_\_ (TELEPHONE #)

9. **CERTIFICATION OF CONTRACTOR**

A. "I, \_\_\_\_\_ (Contractor) \_\_\_\_\_ (Title)  
certify under penalty of perjury, to the best of my knowledge and belief, no regular full-time or part-time employee of any State agency of the State of Arkansas will receive any personal, direct or indirect monetary benefits which would be in violation of the law as a result of the execution of this contract." Where the contractor is a widely-held public corporation, the term 'direct or indirect monetary benefits' shall not apply to any regular corporate dividends paid to a stockholder of said corporation who is also a State employee and who owns less than ten percent (10%) of the total outstanding stock of the contracting corporation."

B. List any other contracts or subcontracts you have with any other state government entities. (Not applicable to contracts between Arkansas state agencies.)

\_\_\_\_\_  
\_\_\_\_\_

C. Are you currently engaged in any legal controversies with any state agencies or represent any clients engaged in any controversy with any Arkansas state agency?

\_\_\_\_\_  
\_\_\_\_\_

D. The contractor agrees to list below, or on an attachment hereto, names, addresses, social security numbers, and relationship of those persons who will be supplying services to the state agency at the time of the execution of the contract. If the names are not known at the time of the execution of the contract, the contractor shall submit the names along with the other information as they become known. Such persons shall, for all purposes, be employees or independent contractors operating under the control of the contractor (sub-contractors), and nothing herein shall be construed to create an employment relationship between the agencies and the persons listed below.

NAME	ADDRESS	SOCIAL SECURITY NUMBER	RELATIONSHIP

**STATE OF ARKANSAS  
PROFESSIONAL/CONSULTANT SERVICES CONTRACT**

- E. The agency shall exercise no managerial responsibilities over the contractor or his employees. In carrying out this contract it is expressly agreed that there is no employment relationship between the contracting parties.
- F. Does any current or former public official or state employee or their relative have an interest in this contract or subcontract thereof or receive any benefit from it? This includes any known relative. If yes, explain:

\_\_\_\_\_

\_\_\_\_\_

**10. DISCLOSURE REQUIRED BY EXECUTIVE ORDER 98-04**

Any contract or amendment to a contract executed by an agency which exceeds \$10,000 shall require the contractor to disclose information as required under the terms of Executive Order 98-04 and the Regulation pursuant thereto. The contractor shall also require the subcontractor to disclose the same information. The Contract and Grant Disclosure and Certification Form (Form PCS-D attachment II-10.3) shall be used for this purpose.

Contracts with another government entity such as a state agency, public education institution, federal government entity, or body of a local government are exempt from disclosure requirements.

The failure of any person or entity to disclose as required under any term of Executive Order 98-04, or the violation of any rule, regulation or policy promulgated by the Department of Finance and Administration pursuant to this Order, shall be considered a material breach of the terms of the contract, lease, purchase agreement, or grant and shall subject the party failing to disclose or in violation to all legal remedies available to the Agency under the provisions of existing law.

**11. EMPLOYMENT BY ARKANSAS STATE AGENCY:**

I, \_\_\_\_\_, certify that I am not presently an employee of the State of Arkansas. I have not been previously employed in past two (2) years by the State of Arkansas except as indicated below.

AGENCY	DATES OF EMPLOYMENT (FROM/TO)	MAXIMUM ANNUAL SALARY

**ATTACHMENT CAN BE ADDED IF ADDITIONAL SPACE IS REQUIRED**

**12. NON-APPROPRIATION CLAUSE:**

“In the event the State of Arkansas fails to appropriate funds or make monies available for any biennial period covered by the term of this contract for the services to be provided by the contractor, this contract shall be terminated on the last day of the last biennial period for which funds were appropriated or monies made available for such purposes.

This provision shall not be construed to abridge any other right of termination the agency may have.”

**STATE OF ARKANSAS  
PROFESSIONAL/CONSULTANT SERVICES CONTRACT**

**13. TERMS**

The term of this agreement begins on the date in SECTION I and will end on the date in SECTION I, and/or as agreed to separately in writing by both parties, but in no event shall the duration of such contract be for longer than one calendar year. Provided, however, that in the unusual event that the best interest of the state would be served by a contract which exceeds one year, the Chief Fiscal Officer may approve such contract, having first received review by the Legislative Council or the Joint Budget Committee. Provided further that in no event shall the initial term of a contract extend beyond the end of the current biennial period unless the General Assembly, prior to the expiration of the biennial period, makes an appropriation for such purpose.

This contract is subject to all of the provisions of the General Accounting and Budgetary Procedures Law (§19-4-1701).

Amendments to contracts will require review by Legislative Council or Joint Budget Committee prior to approval by the Department of Finance and Administration if the original contract was reviewed by Legislative Council or Joint Budget Committee and the amendment increases the dollar amount or involves major changes in the objectives and scope of the contract.

Amendments (to contracts that originally did not require review by Legislative Council or Joint Budget Committee) which increase the total compensation to exceed the sum of \$25,000, shall require review by the Legislative Council or Joint Budget Committee, prior to the approval of the Department of Finance and Administration and before the execution date of the amendment.

This contract may be terminated by either party upon 30 day written notice, unless otherwise agreed by both parties.

**14. AUTHORITY**

- A. This contract shall be governed by the Laws of the State of Arkansas interpreted by the Attorney General of the State of Arkansas and shall be in accordance with the intent of Arkansas Code 19-4-1701.
- B. Any legislation that may be enacted subsequent to the date of this agreement which may cause all or any part of the agreement to be in conflict with the laws of the State of Arkansas will be given proper consideration if and when this contract is renewed or extended; the contract will be altered to comply with the then applicable laws.



**STATE OF ARKANSAS  
PROFESSIONAL/CONSULTANT SERVICES CONTRACT**

18. **WERE AGENCY EMPLOYEES OR OTHER STATE AGENCIES CONSIDERED FOR THESE SERVICES?**

**IF NOT,  
WHY?**

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19. **QUALIFICATIONS OF INDIVIDUAL OR FIRM SELECTED:** \_\_\_\_\_

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20. **SUMMARY OF SELECTION PROCEDURE: (SOLE SOURCE WILL NEED EXPLICIT JUSTIFICATION.)**

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21. **REASON(S) CONTRACTOR SELECTED:**

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22. **OTHER CONTRACTORS SUBMITTING BID RESPONSE AND AMOUNT OF EACH BID.**

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23. **THE AGENCY CONTACT PERSON FOR QUESTION(S) REGARDING THIS CONTRACT:**  
**THIS SECTION SHOULD BE COMPLETED ON EVERY CONTRACT:**

\_\_\_\_\_ (Name) \_\_\_\_\_ (Title)

\_\_\_\_\_ (MAILING ADDRESS FOR RETURNED CONTRACT)

\_\_\_\_\_ (TELEPHONE NUMBER) \_\_\_\_\_ (EMAIL)

**STATE OF ARKANSAS  
PROFESSIONAL/CONSULTANT SERVICES CONTRACT  
FORM OSP-1  
INSTRUCTIONS**

The **Form OSP-1** is to be completed in its entirety for every PCS contract.

**Header Information:**

Enter contract number and vendor number. **Note:** The vendor number must correspond to the legal name of the provider(s) as opposed to the "doing business as" (dba) or "remit to" name.

*DHS Note:*

- *The vendor number is taken from the AASIS Vendor File.*

Provide the Purchase Order # (optional) and Federal ID or Social Security #.

Specify the method of source selection.

**SBS Criteria** should only be selected if the agency, college or university processes its contracts through Arkansas State Building Services. Colleges and Universities that use the SBS criteria but are exempt from SBS review must select from alternate procurement options available.

*DHS Note:*

- *The SBS Criteria method is used to select architects and engineers for constructions projects.*

**Emergency** procurements may only be requested by the agency chief fiscal officer or equivalent or director, division director or deputy director of and agency, college or university, and must be reviewed by the Co-chairpersons of the Legislative Council or Legislative Council Review Committee prior to the beginning time and date of the contract. The Emergency procurement process allows a contract to be implemented prior to review by the full Legislative Council Review Committee. When time allows, Emergency procurements should be made using some form of competitive bid process.

The **Request for Proposal (RFP)** method of procurement allows the use of a set of criteria, in addition to cost, that are considered in the evaluation process of each response. If this procurement method is utilized, include as an attachment, the list of criteria other than cost that were given consideration in the awarding of the contract.

Prior approval from the Office of State Procurement is required before using the **Request for Qualifications (RFQ)** option. This option has customarily been used to develop contracts for legal, architectural, engineering and land surveying services, but is also the preferred method of source selection for certain other services.

*DHS Note:*

- *Prior approval is NOT required for architectural and engineering PCS contracts for construction projects, as they are provided under SBS criteria.*

Indicate **Competitive Bid** when the award of the contract is made to the qualified respondent, meeting specifications, that submits the lowest bid.

**Intergovernmental** contracts are those involving agreements between two or more Arkansas agencies, colleges and or universities. (See § 19-4-1712 No. 5) All intergovernmental contracts with a total dollar value (compensation plus reimbursement) that exceeds \$25,000 are required to be reviewed by the Performance Evaluation and Expenditure Review Committee (PEER) prior to the execution date of the contract. Intergovernmental contracts do not require 98-04 disclosure forms.

**(Form OSP-1 Instructions, Page 1)**

The **Sole Source** designation requires separate justification and either public notice of intent to award or written justification as outlined in the Procurement Regulations for Professional and Consultant Services Contracts. The justification must fully address:

- why the service is needed;
- the methods used to determine that a lack of responsible/responsive competition exists for the service;
- how it was determined that the provider possesses exclusive capabilities;
- why the service is unique;
- whether or not there are patent or proprietary rights which make the required service unavailable from other sources;
- what the agency would do if the provider/service were no longer available, and
- any program considerations which make the use of a “Sole Source” critical to the successful completion of the agency’s task.

*DHS Note:*

- *Prior approval for sole source is NOT required for those contracts that are “Sole Source by law” and those for which the intent to award is published in a newspaper of statewide circulation.*
- *For those that are “Sole Source by law”, cite the applicable legislation on page 7, Section 20 or reference the court order and attach a copy.*
- *For those that are Sole Source by Intent to Award, attach a copy of the advertisement and indicate dates of publication.*

The selection of “**Other**” as a procurement method is limited to a few select contracts that do not fit into any of the previous procurement designations listed. Agencies, colleges and universities are requested to contact the Office of State Procurement for guidance in the use of the selection.

**Section 1:**

DATES, PARTIES: Specify the beginning and ending dates of the contract and the agency(s) and the legal vendor name(s) of those who have entered into the contract. Include the agency(s) number and vendor address as directed.

*DHS Note:*

- *Enter Agency Name/Number as “0710 – DHS – Division Name”.*

**Section 2:**

CALCULATIONS OF COMPENSATION: Provide the compensation and reimbursable rates in the appropriate spaces. State the compensation clearly, and indicate if various levels of expertise are to be supplied by the contractor. A rate of compensation for each level and the number of personnel within each level should be listed. Calculate and extend totals. A schedule of allowable reimbursable expenses and estimated rates for each item of expense should be agreed to. Enter items and rates by items, and extend the total by item column. Finally, enter total of compensation inclusive of reimbursable expenses.

*DHS Note:*

- *Compensation includes fees paid to a contractor for professional or consultant services, salaries, and fringe. Subcontract expenses for services are generally considered compensation.*
- *Reimbursable expenses include maintenance and operations costs, travel, mileage, etc.*
- *If there are no reimbursable expenses, enter \$0.00.*
- *Information regarding “Level of Personnel” should agree with information on page 3, Section 9.D, or an explanation should be given.*
- *Throughout the contract, calculations that are “rounded up” or “rounded down” should be noted as such.*
- *For whole dollar amounts, include .00.*
- *If additional space is required, indicate “See Attachment \_\_\_\_\_” and list all of the information on an attachment to the contract.*

**(Form OSP-1 Instructions, Page 2)**

**Section 3:**

SOURCE OF FUNDS: Designate in the space provided the source of funds to be used in the payment for services rendered under this contract. Enter the Fund Code, Business Area (Agency Number), Fund Center (Appropriation Number), and Commitment Item and indicate the percentage from Federal, State, Cash, Trust and Other funds to be used in payment. Indicate the source of any Federal Grant or Cash Funds used.

*DHS Note:*

- *The percentages entered should represent the percentage in comparison to the TOTAL funding in the contract.*

**Section 4:**

RENDERING OF COMPENSATION: Indicate the schedule of payments agreed to, to include any method(s) that might be utilized to evaluate performance of the criteria enumerated in the objectives and scope section of the contract as a condition of rendering payment to the contractor.

**Section 5:**

OBJECTIVES AND SCOPE: State the objectives and scope clearly and concisely so that the contractor's performance can be effectively evaluated at any time to assure evaluation of satisfactory achievement toward attainment of the contract agreement. Any written data, procedures, forms, survey results, etc., expected to be supplied by the contractor should be enumerated. If the contract is part of a larger plan, this should also be noted. Use attachments as required.

**Section 6:**

AGENCY AGREES TO MAKE AVAILABLE ADVICE, COUNCIL, ETC.: List any resources to be provided by the agency to the contractor as part of the agreement.

**Section 7:**

HAS THIS PROVIDER (*DHS Note: "Contractor or employee of the contractor" is the wording on the form*) BEEN UNDER CONTRACT TO THE AGENCY PREVIOUSLY DURING THE CURRENT FISCAL YEAR? List all previous contracts with this provider during the current fiscal year.

*DHS Note:*

- *List ALL contracts (by contract number and program) that are in effect at the time of the contractor's signature, with this contractor or its employees, for this division for all services.*

**Section 8:**

AGENCY COODINATIOR: Provide the name of the agency representative who will represent the agency in coordinating the work of the contractor. Also include title and telephone number.

**Section 9:**

CERTIFICATION OF CONTRACTOR:

9A) A statement is required by the contractor confirming that no employee of the State will receive any benefits from this contract. Exception is made for widely-held public corporations which pay corporate dividends to stockholders who may also be state employees as long as the employee owns less than 10 % of the total outstanding stock of the contracting corporation.

9B) Contractor is to provide a listing by contract number and agency of all other Arkansas State contracts presently held.

*DHS Note:*

- *List ALL contracts (by contract number) that are in effect at the time of the contractor's signature, with this contractor, for all state agencies for all services.*

9C) Contractor is required to divulge any ongoing litigation with any state agency, college or university and acknowledge if contractor represents any clients engaged in any controversy with any state agency.

**(Form OSP-1 Instructions, Page 3)**

9D) Space is provided for the contractor to list the name, address, social security number and relationship of those persons who will be supplying services to the state agency insofar as they are known at the time the contract is signed. If the names are not known at the time of the execution of the contract, the contractor shall submit the names along with the other information, as they become known. Such persons shall, for all purposes, be employees or independent contractors operating under the control of the contractor (sub-contractors).

9E) This section stipulates that the agency shall in no way exercise any managerial control over the contractor or his/her employees and reiterates that there is not to be any employment relationship between the contractor and the agency.

9F) This section requires that the contractor reveal whether any current or former Arkansas State public official or state employee or their relatives have any interest in this contract or subcontract or will receive any benefit from it.

**Section 10:**

DISCLOSURE REQUIRED BY EXECUTIVE ORDER 98-04: This section requires that on any contract or amendment to a contract executed by an agency, which exceeds the dollar limit established by Executive Order 98-04, the contractor shall disclose all information as required under the terms of Executive Order 98-04 and the Regulation pursuant thereto. The contractor shall also require the subcontractor to disclose the same information. The Contract and Grant Disclosure and Certification Form (Form PCS-D, Attachment II – 10.3) shall be used for this purpose. Agency contracts between government entities including other state agencies, institutions of public education, and federal and local governments are exempt from the disclosure requirement. Failure to disclose as required by Executive Order 98-04, or violation of any Dept. of Finance and Administration rule or regulation pursuant to this Order shall be considered breach of the contract agreement and shall subject the contractor to all legal remedies available to the Agency under the provisions of existing law.

**Section 11:**

EMPLOYMENT BY A STATE AGENCY: Contractor shall confirm by signature that he/she is not nor has been (within the past two (2) years) an employee of the State of Arkansas.

**Section 12:**

NON-APPROPRIATION CLAUSE: By regulation every contract for Professional and Consultant Services will include language that authorizes the State to terminate the agreement in the event the State of Arkansas fails to appropriate funds for the term covered by the contract.

**Section 13:**

SPECIAL TERMS AND CONDITIONS: This contract is subject to all of the State of Arkansas laws, rules and regulations governing Professional and Consultant Services Contracts. **The term** (contract duration) as indicated in Item 1 (beginning and ending dates) is, In accordance with § 19-4-1707, not to exceed a period of more than one year. However, in the unusual event that the best interest of the State would be served by a contract which exceeds one year, the Chief Fiscal Officer may approve such contract, having first received the review of the Legislative Council or the Joint Budget Committee. Provided further, that in no event shall any contract be entered into that would contemplate that payments under such contract be made beyond the expiration of the current biennial period, unless the General Assembly, prior to the expiration of the current biennial period, makes an appropriation for such purpose. **Amendments** to this contract will require review by the Legislative Council or Joint Budget Committee prior to approval by the Department of Finance and Administration, if this contract was previously reviewed by the Legislative Council or Joint Budget Committee and the amendment increases the dollar amount or involves major changes in the objectives and/or scope of the contract. Amendments to this contract that originally did not require review by Legislative Council or Joint Budget Committee which increase the total compensation to more than \$25,000, shall require review by the Legislative Council or Joint Budget Committee, prior to the approval of the Department of Finance and Administration and before the execution date of the amendment. **Termination** may be made in accordance with the specific language included in this contract.

**Section 14:**

AUTHORITY: Paragraph A is a statement of sovereign immunity which serves as notice that contract disputes **(Form OSP-1 Instructions, Page 4)**

will be adjudicated in the State of Arkansas and will be governed by the Laws of the State as interpreted by the Attorney General of the State of Arkansas. Paragraph B advises all parties that if legislation is enacted subsequent to the commencement date of this contract which may cause any or all of the agreement to be in conflict with the laws of the State of Arkansas, that the contract will be amended to comply with existing laws before any extension of the contract is executed.

**Section 15:**

AGENCY DIRECTOR SIGNATURE: The head of the agency shall certify by his/her signature on each contract entered into by that agency that:

- (8) All information required by law and by regulations is supplied;
- (9) The proper contracting form is utilized;
- (10) All information contained in the contract is true and correct to the best of his/her knowledge and belief;
- (11) All general guidelines prescribed by the Chief Fiscal Officer of the State and all specific regulations of the state agency governing such contracts have been complied with;
- (12) The services proposed to be provided under the contract are necessary for the operation of the State agency in fulfilling its legal responsibilities and cannot be provided by an existing State agency or institution;
- (13) The Contractor is fully qualified to perform the services and has no vested interest in the subject matter of the contract which would constitute a conflict of interest and a bar to his providing services of a professional and disinterested quality;
- (14) The contract terms are reasonable and the benefits to be derived sufficient to warrant the expenditure of the funds called for in the contract.
- (15) No obligations will be incurred by a state agency unless sufficient funds are available to pay the obligations when they become due.

**Section 16:**

PROFESSIONAL OR CONSULTANT SERVICE: Indicate that this is a Professional Service contract if the services to be rendered consist of the personal services of an individual or individuals which are professionals in nature. The contract shall specify the results expected from the rendering of the services, rather than detailing the manner in which the services shall be rendered. Indicate that this is a Consultant Service contract if the services to be rendered to the state agency or to a third party beneficiary under the contract are primarily the giving of advice by the contractor on a particular problem or problems facing the agency or the third party beneficiary. The contract can specify the results expected from the services to be rendered by the contractor and the advice or assistance to be provided.

**Section 17:**

SIGNATURES: For this contract to be valid and prior to submittal to the Department of Finance and Administration, Contractor and Agency Director must sign where indicated. Each is to also date, enter title and provide address information.

**Section 18:**

WERE AGENCY EMPLOYEES OR OTHER STATE AGENCIES CONSIDERED FOR THESE SERVICES? IF NOT, WHY? List efforts made to determine that agency employees or other state agencies could not perform the services required.

**Section 19:**

QUALIFICATIONS OF INDIVIDUAL OR FIRM SELECTED: Provide the qualifications listed by the provider that were considered in making the award of this contract.

**Section 20:**

PROVIDE A SUMMARY OF THE SELECTION PROCEDURE. SOLE SOURCE WILL NEED EXPLICIT JUSTIFICATION: Describe how: a) providers were identified; b) responses were solicited, and c) the method of source selection was determined. See page 1, regarding use of Sole Source.

**(Form OSP-1 Instructions, Page 5)**

*DHS Note:*

- *Include the date of the procurement action.*

**Section 21:**

LIST REASON(S) CONTRACTOR WAS SELECTED: Describe the evaluation process and list the reasons the contractor was selected for award.

**Section 22:**

OTHER CONTRACTORS SUBMITTING BID RESPONSE AND AMOUNT OF EACH BID. If the Competitive Bid method of procurement was used in soliciting responses, list each bidder that responded and the amount of each bid. If the Request for Proposal method of procurement was utilized, indicate the bidders who responded and list the criteria, other than price, that were evaluated in the awarding of this contract.

**Section 23:**

AGENCY CONTACT PERSON: Provide the name, title, mailing address, telephone number and email address of the individual in your agency that will serve as the contact regarding questions which may arise.



**Instructions for  
Provider Audit Sign-off Sheet**

**Section I** To be completed as soon as the funding process is begun on each individual agreement and submitted to the Audit Section. **Note:** Audits are normally not required of for profit individuals, organizations, or corporations.

- A. Name of the division which is responsible for preparing and maintaining the Agreement, and the contact person within the initiating division who is responsible for the Agreement, that mail slot , phone number, and FAX number.
- B. Name, mailing address, city, state, and zip code of the provider with whom the division is initiating the Agreement, and the contact person within the provider organization who is responsible for the Agreement and contact phone number.
- C. Vendor #: The vendor number assigned to the entity in the state vendor system.  
  
CFDA #: Number under which the program appears in the Catalog of Federal Domestic Assistance.  
  
FED ID# Federal Tax Identification Number
- D. Name of the program which is being funded through the Agreement (i.e. Emergency Shelter, Day Care, etc.)
- E. Beginning and ending dates of the contract or grant period, along with the anticipated award amount.
- F. Beginning and ending dates of the provider's fiscal year.
- G. Provider type: Indicate either Non-Profit, For-Profit, Government, or Other. (If "Other", explain.)

**Section II** To be completed by the Office of Chief Counsel Audit Section and returned to the initiating division.

- A. **Filed Report:**
  - 1. Beginning and ending dates of the period covered by the latest audit report received by Audit Section
  - 2. 120 days after the end of the provider's fiscal year end is the due date of the audit report, unless otherwise stipulated in the contract agreement, or if an extension has been granted.
  - 3. Date the audit report received by the Audit Section.
- B. **Outstanding Report:**
  - 1. Beginning and ending dates of period to be covered by an outstanding audit report to be filed with the Audit Section.
  - 2. 120 days after the end of the provider's fiscal year end is the due date of the audit report, unless otherwise stipulated in the contract agreement, or if an extension has been granted.
  - 3. Indicates whether an extension has been granted and, if so, the adjusted date.
- C. **Comments:**  
Brief explanation, if required, on any circumstances pertaining to the current or most recent audit report to be filed.
- D. **Certification:**  
Check appropriate box. If current, enter date through which contractor/grantee is current. Add initials of responsible person in Office of Chief Counsel Audit Section and the date processed.

**REIMBURSEMENT RATE INCREASE APPROVAL FORM  
(TO COMPLY WITH ARKANSAS CODE ANNOTATED 20-76-212 AND 20-77-110)**

Originating Division	Signature of Division Director	Date
Division Contact	Telephone Number	Date

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**SECTION A: Rate Increase Requests**

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Request for increase of reimbursement rates as follows:

Current Rate(s)	Proposed Rate(s)	Service(s)

Total Annualized Fund Increase: \_\_\_\_\_ % State: \_\_\_\_\_ % Federal: \_\_\_\_\_ % Other: \_\_\_\_\_

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**SECTION B: Arkansas State Medicaid Plan Amendment Request**

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Total Annualized Fund Increase: \_\_\_\_\_ % State: \_\_\_\_\_ % Federal: \_\_\_\_\_ % Other: \_\_\_\_\_

Amendment Attached?  YES  NO      Requested Effective date for Amendment: \_\_\_\_\_

Approved by: \_\_\_\_\_ Signature of Director, Division of Medical Services      Date \_\_\_\_\_

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**SECTION C: Additional Information Required**

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The originating DHS division must indicate on a clearly labeled attachment the reason(s) for a rate increase and/or amendment to the Arkansas State Medicaid Plan and the provider (s)/provider group(s) affected by the rate increase. Is the rate increase the result of a Federal or State mandate? Be specific as to competition factors, inflationary increases and precisely how annualized increases are computed. What is the current budget for this program and how will the increased cost be funded? Indicate the projected amount of increased cost for the remainder of this fiscal year. Clearly explain the method for calculation of the anticipated cost. If appropriate, indicate whether proposed rates are within current Medicaid rates. Explain attached cost studies, budgets, rate analyses, court orders, needs assessments and all other information submitted to support the request. For Medicaid amendments, indicate whether or not the Health Care Financing Administration has approved the request.

Reviewed and Logged in by: \_\_\_\_\_ OAS/CSS Representative      Date \_\_\_\_\_

DHS-1951      Alternate formats (large print, audio tape, etc.) will be provided upon request.) Page 1 of 2

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Section D: Approvals

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DEPARTMENT OF HUMAN SERVICES

APPROVED

DISAPPROVED

Signature: \_\_\_\_\_  
Director, Department of Human Services \_\_\_\_\_ Date

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DEPARTMENT OF FINANCE AND ADMINISTRATION

APPROVED

DISAPPROVED

Signature: \_\_\_\_\_  
Chief Fiscal Officer, State of Arkansas \_\_\_\_\_ Date

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OFFICE OF THE GOVERNOR

APPROVED

DISAPPROVED

Signature: \_\_\_\_\_  
Governor, State of Arkansas \_\_\_\_\_ Date

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ROUTING

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Route completed form to: DHS Office of Administrative Services  
Contract Support Section, Slot W301  
P.O. Box 1437  
Little Rock, AR 72203-1437

**REIMBURSEMENT RATE INCREASE APPROVAL FORM  
DHS-1951  
Instructions**

**Purpose**

Form DHS 1951 is utilized to obtain required approval prior to the increase of any reimbursement rates paid to providers in purchase of service agreements. Completion of the form will allow the Arkansas Department of Human Services (DHS) to comply with Act 1239 of 1993 (Arkansas Code Annotated 20-76-212 and 20-77-110).

**Definition**

A reimbursement rate increase is defined as an increase in the per unit cost payable to a provider, except for increases mandated by an already approved cost methodology. Rate increases require approval by the Governor and the Chief Fiscal Officer of the State of Arkansas.

**Completion**

To ensure legibility, all information (with the exception of signatures) should be typed or neatly printed in the designated spaces.

The DHS division originating the request for a rate increase shall complete the following items:

Originating Division: Enter the full name of the DHS division. NOTE: In instances of multi-divisional requests, all Divisions requesting rate increases for the same provider are to complete the DHS-1951. In instances of multi-divisional responsibility for the same program/grant/RFP, all Divisions are to complete the DHS-1951 and route it through the designated lead agency as defined by the DHS Director's Office.

Signature of Division Director/Date: After all other items in Section A have been completed, the Division Director, or his authorized representative, shall sign and enter the date of signature.

Division Contact/Telephone Number/Date: The name of the authorized DHS representative who will serve as the contact person if questions should arise during the approval process shall be entered, along with the office telephone number and the date.

**Section A: Rate Increase Requests**

Current Rates(s): Enter the rate(s) currently being charged.

Proposed Rate(s): Enter the proposed rate(s).

Service(s): List the specific services affected by each proposed rate increase.

Total Annualized Fund Increase: Enter the projected dollar amount of increased costs for the entire fiscal year (even though a portion of the fiscal year has elapsed).

% State, % Federal, % Other: Enter the percentage of the total increase to be funded by each of the funding sources listed. Enter "N/A" for any funding source which does not apply.

**SECTION B: Arkansas State Medicaid Plan Amendment Request**

Total Annualized Fund Increase: Enter the projected dollar amount of increased costs for the entire fiscal year (even though a portion of the fiscal year has elapsed).

% State, % Federal, % Other: Enter the percentage of the total increase of Medicaid funding required for each of the funding sources listed. Enter "N/A" for any funding source that does not apply.

Amendment Attached? Mark the appropriate box.

Requested Effective Date for Amendment: Enter the month, day and year the amendment, if approved, will go into effect.

Approved by/Date: A representative of the Office of Administrative Services (OAS), Contract Support Section (CSS) will obtain the signature of the Director of the Division of Medical Services, or his representative, and enter the date of signature if applicable.

### **SECTION C: Additional Information Required**

The originating DHS division shall route the form and the required attachments to OAS/CSS for review.

Reviewed and Logged in by/Date: The OAS/CSS representative shall sign and enter the date of signature.

### **SECTION D: Approvals**

Department of Human Services: The DHS Director shall mark the appropriate box, sign and enter the date of signature. If disapproved, the form and attachments will be returned to the OAS/CSS representative with an explanation for the disapproval. If approved, the form and attachments shall be routed to the Department of Finance and Administration (DFA).

Department of Finance and Administration: The Chief Fiscal Officer shall mark the appropriate box, sign and enter the date of signature. If disapproved, the form and attachments will be returned to the DHS Director with an explanation for the disapproval. If approved, the form and attachments shall be routed to the Office of the Governor.

Office of the Governor: The Governor shall mark the appropriate box, sign and enter the date of signature. If disapproved, the form and attachments will be returned to DFA with an explanation for the disapproval. If approved, the form and attachments shall be routed to:

Department of Human Services  
Office of Administrative Services  
Contract Support Section, Slot W301  
P.O. Box 1437  
Little Rock, Arkansas 72203-1437

**PROFESSIONAL SERVICES CONTRACT  
GENERAL TERMS AND CONDITIONS FOR NON-STATE AGENCY**

In consideration of the premises and the mutual agreements hereinafter set forth, the Contractor and the Department of Human Services (“the Department”) agree as follows:

**Legal Considerations**

The contract shall be construed according to the laws of the State of Arkansas as interpreted by the Arkansas Attorney General. Any legal proceedings against the Department shall be brought in the State of Arkansas’ administrative or judicial forums and the rights and remedies of the parties hereunder shall be determined in accordance with such laws. Venue for all legal proceedings shall be in Pulaski County, Arkansas. Nothing in this contract may be construed as a waiver of the Department’s sovereign immunity.

In no event shall the initial term of this contract extend beyond the end of the current biennial period unless the General Assembly, prior to the expiration of the biennial period, makes an appropriation for such purpose.

**Financial Terms of the Contract**

Payments will be made after services performed based on the following financial terms:

Funding Source	Reimbursement Method *	Payment Limitations **	Match Requirements***	
			Maximum Amount of Match Required OR Percentage of Allowable Billing Required	Type(s) of Match (Select from listing below)

\***Reimbursement Method:** (Select from the following) Actual Cost Reimbursement; Final Negotiated Rate; Fixed Rate; Scheduled Reimbursement

\*\***Payment Limitations:** (Select from the following) Quarterly Cumulative; Monthly Cumulative; None

\*\*\***Matching Requirements:** The Contractor certifies the funds, property, goods, or services listed in this section will be used to meet the match requirements of this agreement. If there are no matching requirements for a funding source, enter “None” in the corresponding box above.

**Type(s) of Match:** The matching requirement may be satisfied by any one or a combination of the following methods unless specific funding source restrictions apply.

**Cash Match:** Cash will be obtained by the Contractor and will be applied against allowable costs covered by this agreement.

**Donation of Property:** Title to or the use of property or equipment has been donated by a public agency for the program(s) covered by this agreement. If title to property is donated, match value is the fair market value of the property. If the use of the property or equipment is donated, match value is the fair rental value as determined by applicable Department policy will be used as matching of the payments.

**Third Party In-Kind Contributions.** Property, goods, or services have been donated by a non-federal agency for the programs(s) covered by this agreement without charge to the contractor. The Code of Federal Regulations, Title 45, Part 74, Subpart G shall be used to establish the basis of valuation.

**Funds Transfer:** Match funds will be submitted by a third party to the Department of Human Services by check or money order under the terms of this agreement. Matching funds are to be received by DHS in an amount sufficient to match billing before the contractor will be reimbursed for services.

For contracts for which the donor is a state agency, it is understood that, in accordance with Arkansas Statutes Annotated 13.339 (E), such donations are subject to availability of appropriated funds which may lawfully be used for this purpose.

The Contractor certifies that any funds to be donated under this agreement which are derived or come directly or indirectly from Federal or State funds, or any other contractor under contract to the Department, have been specifically listed as a source above.

The Contractor certifies that the matching arrangements comply with requirements established in the Code of Federal Regulations, Title 45, Part 74, Subpart G (Cost Sharing or Matching) and all applicable DHS policy.

### **Term of the Contract**

The contract period will begin on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and shall end on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, unless terminated sooner under other provisions of this contract, or as agreed to separately in writing by both parties. The contract may be extended for up to \_\_\_\_\_ additional one-year terms (to agree with terms stated in the procurement) at the sole discretion of the Department and subject to approval of the Arkansas Department of Finance and Administration (DFA), appropriation of necessary funding, and review by any necessary state or federal authority.

### **Funding Availability**

All funding within this contract is available for the entire time period of the contract except as indicated in Attachment \_\_\_\_\_ to this contract. If no attachment, enter NA.

### **Terms of Payment/Billing**

The Contractor agrees to submit all billing invoices within sixty days of the expiration of the contract. Any billings for services rendered during a particular state fiscal year which are not submitted within ninety days of the end of the fiscal year will not be paid.

## **Termination of Contract**

DHS may cancel this contract unilaterally at any time, for any reason including unavailability of federal funds, state funds or both by giving the other party thirty (30) calendar days written notice, and delivering notice of cancellation either in person or by certified mail, return receipt requested, restricted delivery. Availability of funds will be determined at the sole discretion of the Department.

Payments for completed services or deliverables satisfactorily delivered to and approved by the Department shall be at the contract price. Payment for partially completed services or deliverables satisfactorily delivered to and not yet approved by the Department shall be at a price mutually agreed upon by the Contractor and the Department. In addition to any other law, rule or provision which may authorize complete or partial contract termination, the Department may terminate this contract in whole or in part when the Department determines that the Contractor or subcontractor has failed to satisfactorily perform its contractual duties and responsibilities.

## **Procedure on Expiration or Termination**

Upon delivery by certified mail to the Contractor of a Notice of Termination specifying the nature of the termination and the date upon which such termination becomes effective, the Contractor shall:

- Stop work under the contract on the date and to the extent specified in the Notice of Termination,
- Place no further orders or enter in any additional subcontracts for services,
- Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination,
- Assign to the Department in the manner and to the extent directed by the Department representative all of the right, title and interest of the Contractor in the orders or subcontracts so terminated. The Department shall have the right, in its discretion, to settle or pay any and all claims arising out of the termination of such orders and subcontracts,
- With the approval or ratification of the Department representative, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable, in whole or part, in accordance with the provisions of this Contract.
- Transfer title to the Department and deliver in the manner, at the time, and extent directed by the Department representative, all files, data, information, manuals, or other documentation, or property, in any form whatsoever, that relate to the work terminated by the Notice of Termination.
- Complete the performance of such part of the work as shall not have been terminated by the Notice of Termination.
- Take such action as may be necessary, or as the Department representative may direct, for the protection and preservation of the property related to the contract which is in the possession of the Contractor and in which the Department has or may acquire an interest.

The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of any item or reimbursable price under this clause.

## **Termination Claims**

After receipt of a Notice of Termination, the Contractor shall submit to the Department all outstanding claims within ten (10) working days. The Contractor and the Department may agree Terms and Conditions, non-State Agency (07/02/02) page 3

upon the amounts to be paid to the Contractor by reason of the total or partial termination of work as described in this section.

In the event of the failure of the Contractor and the Department to agree in whole or in part as to the amount with respect to costs to be paid to the Contractor in connection with the total or partial termination of work as described in this section, the Department shall determine, on the basis of information available, the amount, if any, due to the Contractor by reason of termination and shall pay to the Contractor the amount so determined.

**Contractor**

It is expressly agreed that the Contractor, officers, and employees of the Contractor or Sub-Contractor in the performance of this contract shall act in an independent capacity and not as officers or employees of the Department. It is further expressly agreed that the Department shall exercise no managerial responsibility over the Contractor nor shall this contract be construed as a partnership or joint venture between the Contractor or any subcontractor and the Department or the State of Arkansas.

The Contractor hereby represents and warrants to the Department that as of the execution date of this Contract the Contractor has been duly organized and is validly existing and in good standing under the laws of the State of Arkansas, with power and authority to own its properties and to conduct its business as such properties shall be currently owned and such business is presently conducted, and had at all relevant times, and shall have power, authority and legal right to enter into this Contract.

There are no proceedings or investigations pending or threatened, before any court, regulatory body, administrative agency or other governmental instrumentality having jurisdiction over the Contractor or its properties (i) seeking to prevent the consummation of any of the transactions contemplated by this Contract; or (ii) seeking any determination or ruling that might materially and adversely affect the performance by the Contractor of its obligations under, or the validity or enforceability of this Contract.

All approvals, authorizations, consents, orders or other actions of any person or of any governmental body or official required to be obtained on or prior to the date hereof in connection with the execution and delivery of this Contract and the performance of the services contemplated by this Contract and the fulfillment of the terms hereof have been obtained.

The Contractor and the executive officers of the Contractor have not been the subject of any proceeding under the United States Bankruptcy Code.

**Force Majeure**

The Contractor will not be liable for any cost to the Department if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, Acts of God, fires, quarantine restriction, strikes and freight embargoes.

**Disputes**

In the event of any dispute concerning any performance by the Department under the contract, the Contractor shall notify the Contract Administrator in writing. The Department representative will then attempt to negotiate a settlement of the dispute with the parties. If the parties are unable to settle the dispute within twenty days after receipt of the notice by the Department representative, the Contractor may submit the disputed issues in writing to the Department

Terms and Conditions, non-State Agency (07/02/02) page 4

Director or his designee for review. Within fifteen (15) days after the written submission of the dispute to the Department, and after a review of the issues and positions of the parties, the Department will issue a written statement of the Department's position regarding the dispute.

**Confidentiality of Information**

In connection with this Contract, each party hereto will receive certain confidential information relating to the other party. For purposes of this Contract, any information furnished or made available to one party relating to the financial condition, results of operation, business, customers, properties, assets, liabilities or information relating to recipients and providers is collectively referred to as "Confidential Information"

The Contractor shall treat all Confidential Information which is obtained by it through its performance under the contract as Confidential Information to the extent that confidential treatment is provided under State and Federal law, and shall not use any information so obtained in any manner except as necessary for the proper discharge of its obligations and securing of its rights hereunder. The parties acknowledge that the disclosure of Confidential Information in contravention of the provisions hereof would damage the party to whom the information disclosed relates and such party has the right to seek all remedies at law or equity to minimize such damage and to obtain compensation therefor.

**Public Disclosure**

Upon signing of the contract by all parties, terms of the contract shall become available to the public, pursuant to the provisions of Ark. Code Ann., § 25-19-101 et seq.

**Inspection of Work Performed**

The State of Arkansas and its authorized representatives shall, at all reasonable times, have the right to enter the Contractor's work areas to inspect, monitor, or otherwise evaluate the quality, appropriateness, and timeliness of work, services, or both, that have been or are being performed.

**Subcontracts**

The Contractor is fully responsible for all work performed under the contract.

The Contractor may, with the prior written consent of the Department, enter into written subcontract (s) for performance of certain of its functions under the contract.

No subcontract under this contract shall in any way relieve the Contractor of any responsibility for performance of its duties.

The Contractor agrees that all subcontracts shall adhere to Department policies.

The Contractor shall give the Department immediate notice in writing by certified mail of any action or suit filed and prompt notice of any claim made against the Contractor or any subcontractor which may result in litigation related in any way to the contract or the Department.

**Audit Requirement:**

Contractor shall comply with the DHS audit requirements as outlined in "Arkansas Department of Human Services Audit Guidelines". Copies may be obtained from:

Arkansas Department of Human Services  
Office of Chief Counsel Audit Section  
P.O. Box 1437 – Slot S270  
Little Rock, Arkansas 72203-1437

**Indemnification**

The Contractor agrees to indemnify, defend, and save harmless the State, the Department, its officers, agents and employees from any and all damages, losses, claims, liabilities and related costs, expenses, including reasonable attorney's fees and disbursements awarded against or incurred by the Department arising out of or as a result of:

- Any claims or losses resulting from services rendered by any person, or firm, performing or supplying services, materials, or supplies in connection with the performance of the contract;
- Any claims or losses to any person or firm injured or damaged by the erroneous or negligent acts (including without limitation disregard of Federal or State regulations or statutes) of the Contractor, its officers or employees in the performance of the contract;
- Any claims or losses resulting to any person or firm injured or damaged by the Contractor, its officers or employees by the publication, translation, reproduction, delivery, performance, use, or disposition of any data processed under the contract in a manner not authorized by the contract, or by Federal or State regulations or statutes;
- Any failure of the Contractor, its officers or employees to observe local, federal or State of Arkansas laws, including but not limited to labor laws and minimum wage laws.
- The Contractor shall agree to hold the Department harmless and to indemnify the Department for any additional costs of alternatively accomplishing the goals of the contract, as well as any liability, including liability for costs or fees, which the Department may sustain as a result of the Contractor's or its subcontractor's performance or lack of performance.

**Assignments**

The Contractor shall not assign the contract in whole or in part or any payment arising therefrom without the prior written consent of the Department representative.

**Employment Practices**

Neither the Contractor nor its subcontractors shall discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age (except as provided by law), marital status, political affiliation, or disability. The Contractor must take affirmative action to ensure that employees, as well as applicants for employment, are treated without discrimination because of their race, color, religion, sex, national origin, age (except as provided by law), marital status, political affiliation, or disability. Such action shall include, but not be limited to, the following:

- Employment
- Promotion
- Demotion or transfer
- Recruitment or recruitment advertising
- Layoff or termination
- Rates of pay or other forms of compensation, and
- Selection for training, including apprenticeship.

**Waiver**

No covenant, condition, duty, obligation, or undertaking contained in or made a part of the contract will be waived except by the written agreement of the parties, and forbearance or indulgence in any other form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the party to which the same may apply; and until complete

performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, any other party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.

### **Department Property**

Property, including intellectual property, acquired or created by the Contractor as a Contract deliverable, is the property of the Department. The Contractor shall be responsible for the proper custody and care of all Department owned property, including Department owned property used in connection with the performance of this contract and the Contractor agrees to reimburse the Department for its loss or damage due to negligence, theft, vandalism, or Acts of God.

### **Use and Ownership of Software**

The Contractor will have access to all applications software that DHS requires the Contractor to use in the performance of the services covered in the contract, subject to customary confidentiality and other license terms and conditions. No changes in the applications software may be made without the written consent of the Contract Administrator if the change would have the effect of causing DHS to incur additional costs for either hardware or software upgrades or both.

Any applications software developed by the Contractor in the performance of the services under this contract must become the property of the State of Arkansas at no additional cost. Any existing software applications owned by the Contractor and used in the performance of the services under this contract must be granted to the State of Arkansas at no additional cost, subject to customary confidentiality and other license terms and conditions.

### **Contract Variations**

If any provision of the Contract (including items incorporated by reference) is declared or found to be illegal, unenforceable, or void, then both the Department and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of the Contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

### **Attorney's Fees**

In the event that either party to this Contract deems it necessary to take legal action to enforce any provision of the contract, and the Department prevails, the Contractor agrees to pay all expenses of such action, including attorney's fees and costs at all stages of litigation as set by the court or hearing officer. Legal action shall include administrative proceedings.

### **Liability**

In the event of non-performance of a contractual obligation by the Contractor or his agents which results in the determination by Federal authorities of noncompliance with Federal regulations and standards, the Contractor will be liable to the Department in full for all penalties, sanctions and disallowance's assessed against the Department.

### **Records Retention**

The Contractor agrees to retain all records for five (5) years after final payment is made under this Contract or any related subcontract. In the event any audit, litigation or other action involving these records is initiated before the end of the five (5) year period, the Contractor agrees to retain these records until all issues arising out of the action are resolved or until the end of the five (5) year period, whichever is later.

### **Access to Contractor's Records**

The Contractor will grant access to its records upon request by state or federal government entities or any of their duly authorized representatives. Access will be given to any books,

documents, papers or records of the Contractor which are related to any services performed under the contract. The Contractor additionally consents that all subcontracts will contain adequate language to allow the same guaranteed access to the records of subcontractors.

**Ownership of Documentation**

All documents and deliverables prepared by the Contractor and accepted by the Department shall become the property of the Department and shall not be used for any other purpose by the Contractor without the Department's specific written consent.

**Disclosure**

The failure of any person or entity to disclose as required under any term of Executive Order 98-04, or the violation of any rule, regulation or policy promulgated by the State Department of Finance and Administration pursuant to this Order, shall be considered a material breach of the terms of the contract, lease, purchase agreement, or grant and shall subject the party failing to disclose or in violation to all legal remedies available to the Department under the provisions of existing law.

**Set-Off**

The parties agree that the Department, in its sole discretion, shall have the right to set-off any money Contractor owes the Department from the Department's payment to Contractor under this contract.

**State and Federal Laws**

Performance of this contract by both parties must comply with State and federal laws and regulations. If any statute or regulation is enacted which requires a change in this contract or any attachment, then both parties will deem this contract and any attachment to be automatically amended to comply with the newly enacted statute or regulation as of its effective date.

**Criminal History Check/Central Registry Check**

Contractor shall comply with Arkansas Code Annotated (A.C.A.) §21-15-101 *et seq*, or any amendments thereto, which requires all employees of state agencies, in designated positions including those providing care, supervision, treatment or any other services to the elderly, mentally ill or developmentally disabled persons, to individuals with mental illnesses or to children who reside in any state-operated facility or a position in which the applicant or employee will have direct contact with a child, to have a criminal history check and a central registry check. Should an applicant or employee be found to have been convicted of a crime listed in A.C.A. §21-15-101 *et seq*, that employee shall be prohibited from providing services in a designated position as defined by Arkansas law or being present at the facility.

**Compliance with Department Policy Issuances**

The Contractor agrees to deliver the services authorized by this contract or any attachment in accordance with all manuals and other official issuances of the Department promulgated through the Administrative Procedures Act.

**Relinquishment**

The failure of the Department to insist upon the performance of any of the conditions in any one or more instances shall not be construed as a waiver or relinquishment of the future benefit of said condition.

**Entire Contract**

The parties acknowledge that each have read this Contract, understand it and agree to be bound by the terms. The parties further agree that this Contract is the complete and exclusive statement

of the agreement of the parties with respect to the subject matter hereof and that it supersedes all prior proposals, representations, arrangements, understandings, and agreements, whether oral or written, between the parties with respect to the subject matter hereof.

This Contract may not be modified, amended, or in any way altered except by a written agreement duly executed by the parties and approved in accordance with the laws and established procedures of the State of Arkansas.

**Survival of Rights and Obligations**

The right and obligations of the Parties under this Contract shall survive and continue after the ending or expiration of the term of this Contract, and shall bind the parties, and their legal representatives, successors, heirs and assigns.

**Notices**

All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if mailed by first class mail, postage prepaid, to:

\_\_\_\_\_  
(address)  
\_\_\_\_\_

Attention: \_\_\_\_\_  
(name of contractor contact person or such other name or address as may hereafter be furnished to Department in writing by the Contractor)

Notices to the Department should be mailed to:

\_\_\_\_\_  
(address)  
\_\_\_\_\_

Attention: \_\_\_\_\_  
(name of DHS contact person)

**Severability of Provisions**

If any one or more of the covenants, agreements, provisions or terms of this Contract shall be for any reason whatsoever held invalid, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Contract and shall in no way affect the validity or enforceability of the other provisions of this Contract.

**Certification Regarding Lobbying:**

The Contractor will comply with public law 101-121, section 319 (section 1352 of Title 31 U.S.C.) for an award in excess of \$100,000.00 by certifying that appropriated federal funds have not been or will not be used to pay any person to influence or attempt to influence a federal official/employee in connection with the awarding of any federal contract, grant, loan or cooperative agreement.

If the Contractor has paid or will pay for lobbying using funds other than federal appropriated funds, Standard Form-LLL (Disclosure of Lobbying Activities) shall be completed and included as an attachment to this contract.

**Certification Regarding Debarment:**

The Contractor, as a lower tier recipient of \$25,000.00 or more in federal funds, will comply with Executive Order 12549 (Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions).

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

- are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal or state agency
- where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled \*Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions\* without modification in all lower tier covered transactions.

I hereby certify that the Contractor is in compliance with Public Law 101-121 (Certification Regarding Lobbying) and Executive Order 12549 (Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions):

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Signature Date

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Printed or Typed Name and Title of Certifying Official

**Employment Practices Certification**

I hereby certify that the Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, color, religion, gender, national origin, age (except as provided by law) or disability. Contractor must insure that employees, as well as applicants for employment, are treated without discrimination because of their race, color, religion, gender, national origin, age (except as provided by law) or disability. Such action shall include, but not be limited to, employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection of training, including apprenticeships.

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Signature Date

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Printed or Typed Name and Title of Certifying Official

**PROFESSIONAL SERVICES CONTRACT  
GENERAL TERMS AND CONDITIONS FOR STATE AGENCY**

In consideration of the premises and the mutual agreements hereinafter set forth, the Contractor and the Department of Human Services (“the Department”) agree as follows:

**Legal Considerations**

The contract shall be construed according to the laws of the State of Arkansas as interpreted by the Arkansas Attorney General. Any legal proceedings against the Department shall be brought in the State of Arkansas’ administrative or judicial forums and the rights and remedies of the parties hereunder shall be determined in accordance with such laws. Venue for all legal proceedings shall be in Pulaski County, Arkansas. Nothing in this contract may be construed as a waiver of the Department’s sovereign immunity.

In no event shall the initial term of this contract extend beyond the end of the current biennial period unless the General Assembly, prior to the expiration of the biennial period, makes an appropriation for such purpose.

**Financial Terms of the Contract**

Payments will be made after services performed based on the following financial terms:

Funding Source	Reimbursement Method *	Payment Limitations **	Match Requirements***	
			Maximum Amount of Match Required OR Percentage of Allowable Billing Required	Type(s) of Match (Select from listing below)

\***Reimbursement Method:** (Select from the following) Actual Cost Reimbursement; Final Negotiated Rate; Fixed Rate; Scheduled Reimbursement

\*\***Payment Limitations:** (Select from the following) Quarterly Cumulative; Monthly Cumulative; None

\*\*\***Matching Requirements:** The Contractor certifies the funds, property, goods, or services listed in this section will be used to meet the match requirements of this agreement. If there are no matching requirements for a funding source, enter “None” in the corresponding box above.

**Type(s) of Match:** The matching requirement may be satisfied by any one or a combination of the following methods unless specific funding source restrictions apply.

- **Cash Match:** Cash will be obtained by the Contractor and will be applied against allowable costs covered by this agreement.
- **Donation of Property:** Title to or the use of property or equipment has been donated by a public agency for the program(s) covered by this agreement. If title to property is donated, match value is the fair market value of the property. If the use of the property or equipment is donated, match value is the fair rental value as determined by applicable Department policy will be used as matching of the payments.
- **Third Party In-Kind Contributions.** Property, goods, or services have been donated by a non-federal agency for the programs(s) covered by this agreement without charge to the contractor. The Code of Federal Regulations, Title 45, Part 74, Subpart G shall be used to establish the basis of valuation.
- **Funds Transfer:** Match funds will be submitted by a third party to the Department of Human Services by check or money order under the terms of this agreement. Matching funds are to be received by DHS in an amount sufficient to match billing before the contractor will be reimbursed for services.

For contracts for which the donor is a state agency, it is understood that, in accordance with Arkansas Statutes Annotated 13.339 (E), such donations are subject to availability of appropriated funds which may lawfully be used for this purpose.

The Contractor certifies that any funds to be donated under this agreement which are derived or come directly or indirectly from Federal or State funds, or any other contractor under contract to the Department, have been specifically listed as a source above.

The Contractor certifies that the matching arrangements comply with requirements established in the Code of Federal Regulations, Title 45, Part 74, Subpart G (Cost Sharing or Matching) and all applicable DHS policy.

### **Term of the Contract**

The contract period will begin on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and shall end on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, unless terminated sooner under other provisions of this contract, or as agreed to separately in writing by both parties. The contract may be extended for up to \_\_\_\_\_ additional one-year terms (to agree with terms stated in the procurement) at the sole discretion of the Department and subject to approval of the Arkansas Department of Finance and Administration (DFA), appropriation of necessary funding, and review by any necessary state or federal authority.

### **Funding Availability**

All funding within this contract is available for the entire time period of the contract except as indicated in Attachment \_\_\_ to this contract. If no attachment, enter NA.

### **Terms of Payment/Billing**

The Contractor agrees to submit all billing invoices within sixty days of the expiration of the contract. Any billings for services rendered during a particular state fiscal year which are not submitted within ninety days of the end of the fiscal year will not be paid.

## **Termination of Contract**

DHS may cancel this contract unilaterally at any time, for any reason including unavailability of federal funds, state funds or both by giving the other party thirty (30) calendar days written notice, and delivering notice of cancellation either in person or by certified mail, return receipt requested, restricted delivery. Availability of funds will be determined at the sole discretion of the Department.

Payments for completed services or deliverables satisfactorily delivered to and approved by the Department shall be at the contract price. Payment for partially completed services or deliverables satisfactorily delivered to and not yet approved by the Department shall be at a price mutually agreed upon by the Contractor and the Department. In addition to any other law, rule or provision which may authorize complete or partial contract termination, the Department may terminate this contract in whole or in part when the Department determines that the Contractor or subcontractor has failed to satisfactorily perform its contractual duties and responsibilities.

## **Procedure on Expiration or Termination**

Upon delivery by certified mail to the Contractor of a Notice of Termination specifying the nature of the termination and the date upon which such termination becomes effective, the Contractor shall:

- Stop work under the contract on the date and to the extent specified in the Notice of Termination,
- Place no further orders or enter in any additional subcontracts for services,
- Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination,
- Assign to the Department in the manner and to the extent directed by the Department representative all of the right, title and interest of the Contractor in the orders or subcontracts so terminated. The Department shall have the right, in its discretion, to settle or pay any and all claims arising out of the termination of such orders and subcontracts,
- With the approval or ratification of the Department representative, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable, in whole or part, in accordance with the provisions of this Contract.
- Transfer title to the Department and deliver in the manner, at the time, and extent directed by the Department representative, all files, data, information, manuals, or other documentation, or property, in any form whatsoever, that relate to the work terminated by the Notice of Termination.
- Complete the performance of such part of the work as shall not have been terminated by the Notice of Termination.
- Take such action as may be necessary, or as the Department representative may direct, for the protection and preservation of the property related to the contract which is in the possession of the Contractor and in which the Department has or may acquire an interest.

The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of any item or reimbursable price under this clause.

## **Termination Claims**

After receipt of a Notice of Termination, the Contractor shall submit to the Department all outstanding claims within ten (10) working days. The Contractor and the Department may agree

upon the amounts to be paid to the Contractor by reason of the total or partial termination of work as described in this section.

In the event of the failure of the Contractor and the Department to agree in whole or in part as to the amount with respect to costs to be paid to the Contractor in connection with the total or partial termination of work as described in this section, the Department shall determine, on the basis of information available, the amount, if any, due to the Contractor by reason of termination and shall pay to the Contractor the amount so determined.

**Contractor**

It is expressly agreed that the Contractor, officers, and employees of the Contractor or Sub-Contractor in the performance of this contract shall act in an independent capacity and not as officers or employees of the Department. It is further expressly agreed that the Department shall exercise no managerial responsibility over the Contractor nor shall this contract be construed as a partnership or joint venture between the Contractor or any subcontractor and the Department or the State of Arkansas.

The Contractor hereby represents and warrants to the Department that as of the execution date of this Contract the Contractor has been duly organized and is validly existing and in good standing under the laws of the State of Arkansas, with power and authority to own its properties and to conduct its business as such properties shall be currently owned and such business is presently conducted, and had at all relevant times, and shall have power, authority and legal right to enter into this Contract.

There are no proceedings or investigations pending or threatened, before any court, regulatory body, administrative agency or other governmental instrumentality having jurisdiction over the Contractor or its properties (i) seeking to prevent the consummation of any of the transactions contemplated by this Contract; or (ii) seeking any determination or ruling that might materially and adversely affect the performance by the Contractor of its obligations under, or the validity or enforceability of this Contract.

All approvals, authorizations, consents, orders or other actions of any person or of any governmental body or official required to be obtained on or prior to the date hereof in connection with the execution and delivery of this Contract and the performance of the services contemplated by this Contract and the fulfillment of the terms hereof have been obtained.

The Contractor and the executive officers of the Contractor have not been the subject of any proceeding under the United States Bankruptcy Code.

**Force Majeure**

The Contractor will not be liable for any cost to the Department if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, Acts of God, fires, quarantine restriction, strikes and freight embargoes.

**Disputes**

In the event of any dispute concerning any performance by the Department under the contract, the Contractor shall notify the Contract Administrator in writing. The Department representative will then attempt to negotiate a settlement of the dispute with the parties. If the parties are unable to settle the dispute within twenty days after receipt of the notice by the Department representative, the Contractor may submit the disputed issues in writing to the Department

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Director or his designee for review. Within fifteen (15) days after the written submission of the dispute to the Department, and after a review of the issues and positions of the parties, the Department will issue a written statement of the Department's position regarding the dispute.

**Confidentiality of Information**

In connection with this Contract, each party hereto will receive certain confidential information relating to the other party. For purposes of this Contract, any information furnished or made available to one party relating to the financial condition, results of operation, business, customers, properties, assets, liabilities or information relating to recipients and providers is collectively referred to as "Confidential Information"

The Contractor shall treat all Confidential Information which is obtained by it through its performance under the contract as Confidential Information to the extent that confidential treatment is provided under State and Federal law, and shall not use any information so obtained in any manner except as necessary for the proper discharge of its obligations and securing of its rights hereunder. The parties acknowledge that the disclosure of Confidential Information in contravention of the provisions hereof would damage the party to whom the information disclosed relates and such party has the right to seek all remedies at law or equity to minimize such damage and to obtain compensation therefor.

**Public Disclosure**

Upon signing of the contract by all parties, terms of the contract shall become available to the public, pursuant to the provisions of Ark. Code Ann., § 25-19-101 et seq.

**Inspection of Work Performed**

The State of Arkansas and its authorized representatives shall, at all reasonable times, have the right to enter the Contractor's work areas to inspect, monitor, or otherwise evaluate the quality, appropriateness, and timeliness of work, services, or both, that have been or are being performed.

**Subcontracts**

The Contractor is fully responsible for all work performed under the contract.

The Contractor may, with the prior written consent of the Department, enter into written subcontract (s) for performance of certain of its functions under the contract.

No subcontract under this contract shall in any way relieve the Contractor of any responsibility for performance of its duties.

The Contractor agrees that all subcontracts shall adhere to Department policies.

The Contractor shall give the Department immediate notice in writing by certified mail of any action or suit filed and prompt notice of any claim made against the Contractor or any subcontractor which may result in litigation related in any way to the contract or the Department.

**Audit Requirement:**

Contractor shall comply with the DHS audit requirements as outlined in "Arkansas Department of Human Services Audit Guidelines". Copies may be obtained from:

Arkansas Department of Human Services  
Office of Chief Counsel Audit Section  
P.O. Box 1437 – Slot S270  
Little Rock, Arkansas 72203-1437

**Indemnification**

With respect to loss, expense, damage, liability, claims or demands, either at law or in equity, for actual or alleged personal injuries or property damage arising from the work performed under this agreement by the Contractor and its employees, agents, or subcontractors, and for any additional costs of alternatively accomplishing the goals of the contract, as well as any liability, including liability for costs or fees, which the contracting Division may sustain as a result of the Contractor's performance or lack of performance, Contractor agrees that: it will cooperate with the contracting Division in the defense of any action or claim brought against the contracting Division seeking the foregoing damages or relief; it will in good faith cooperate with the contracting Division should the Division present any claims of the foregoing nature against Contractor to the Claims Commission of the State of Arkansas; it will not take any action to frustrate or delay the prompt hearing on claims of the foregoing nature by the said Claims Commission and will make reasonable efforts to expedite said hearing; provided, however, Contractor reserves its right to assert in good faith all claims and defenses available to it in any proceeding in said Claims Commission or other appropriate forum. The foregoing indemnification clause shall take precedent over any conflicting indemnification clause in this contract.

**Assignments**

The Contractor shall not assign the contract in whole or in part or any payment arising therefrom without the prior written consent of the Department representative.

**Employment Practices**

Neither the Contractor nor its subcontractors shall discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age (except as provided by law), marital status, political affiliation, or disability. The Contractor must take affirmative action to ensure that employees, as well as applicants for employment, are treated without discrimination because of their race, color, religion, sex, national origin, age (except as provided by law), marital status, political affiliation, or disability. Such action shall include, but not be limited to, the following:

- Employment
- Promotion
- Demotion or transfer
- Recruitment or recruitment advertising
- Layoff or termination
- Rates of pay or other forms of compensation, and
- Selection for training, including apprenticeship.

**Waiver**

No covenant, condition, duty, obligation, or undertaking contained in or made a part of the contract will be waived except by the written agreement of the parties, and forbearance or indulgence in any other form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the party to which the same may apply; and until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, any other party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.

**Department Property**

Property, including intellectual property, acquired or created by the Contractor as a Contract deliverable, is the property of the Department. The Contractor shall be responsible for the proper custody and care of all Department owned property, including Department owned property used in connection with the performance of this contract and the Contractor agrees to reimburse the Department for its loss or damage due to negligence, theft, vandalism, or Acts of God.

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**Use and Ownership of Software**

The Contractor will have access to all applications software that DHS requires the Contractor to use in the performance of the services covered in the contract, subject to customary confidentiality and other license terms and conditions. No changes in the applications software may be made without the written consent of the Contract Administrator if the change would have the effect of causing DHS to incur additional costs for either hardware or software upgrades or both.

Any applications software developed by the Contractor in the performance of the services under this contract must become the property of the State of Arkansas at no additional cost. Any existing software applications owned by the Contractor and used in the performance of the services under this contract must be granted to the State of Arkansas at no additional cost, subject to customary confidentiality and other license terms and conditions.

**Contract Variations**

If any provision of the Contract (including items incorporated by reference) is declared or found to be illegal, unenforceable, or void, then both the Department and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of the Contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

**Attorney's Fees**

In the event that either party to this Contract deems it necessary to take legal action to enforce any provision of the contract, and the Department prevails, the Contractor agrees to pay all expenses of such action, including attorney's fees and costs at all stages of litigation as set by the court or hearing officer. Legal action shall include administrative proceedings.

**Liability**

In the event of non-performance of a contractual obligation by the Contractor or his agents which results in the determination by Federal authorities of noncompliance with Federal regulations and standards, the Contractor will be liable to the Department in full for all penalties, sanctions and disallowance's assessed against the Department.

**Records Retention**

The Contractor agrees to retain all records for five (5) years after final payment is made under this Contract or any related subcontract. In the event any audit, litigation or other action involving these records is initiated before the end of the five (5) year period, the Contractor agrees to retain these records until all issues arising out of the action are resolved or until the end of the five (5) year period, whichever is later.

**Access to Contractor's Records**

The Contractor will grant access to its records upon request by state or federal government entities or any of their duly authorized representatives. Access will be given to any books, documents, papers or records of the Contractor which are related to any services performed under the contract. The Contractor additionally consents that all subcontracts will contain adequate language to allow the same guaranteed access to the records of subcontractors.

**Ownership of Documentation**

All documents and deliverables prepared by the Contractor and accepted by the Department shall become the property of the Department and shall not be used for any other purpose by the Contractor without the Department's specific written consent.

**Disclosure**

The failure of any person or entity to disclose as required under any term of Executive Order 98-  

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04, or the violation of any rule, regulation or policy promulgated by the State Department of Finance and Administration pursuant to this Order, shall be considered a material breach of the terms of the contract, lease, purchase agreement, or grant and shall subject the party failing to disclose or in violation to all legal remedies available to the Department under the provisions of existing law.

**Set-Off**

The parties agree that the Department, in its sole discretion, shall have the right to set-off any money Contractor owes the Department from the Department's payment to Contractor under this contract.

**State and Federal Laws**

Performance of this contract by both parties must comply with State and federal laws and regulations. If any statute or regulation is enacted which requires a change in this contract or any attachment, then both parties will deem this contract and any attachment to be automatically amended to comply with the newly enacted statute or regulation as of its effective date.

**Criminal History Check/Central Registry Check**

Contractor shall comply with Arkansas Code Annotated (A.C.A.) §21-15-101 *et seq*, or any amendments thereto, which requires all employees of state agencies, in designated positions including those providing care, supervision, treatment or any other services to the elderly, mentally ill or developmentally disabled persons, to individuals with mental illnesses or to children who reside in any state-operated facility or a position in which the applicant or employee will have direct contact with a child, to have a criminal history check and a central registry check. Should an applicant or employee be found to have been convicted of a crime listed in A.C.A. §21-15-101 *et seq*, that employee shall be prohibited from providing services in a designated position as defined by Arkansas law or being present at the facility.

**Compliance with Department Policy Issuances**

The Contractor agrees to deliver the services authorized by this contract or any attachment in accordance with all manuals and other official issuances of the Department promulgated through the Administrative Procedures Act.

**Relinquishment**

The failure of the Department to insist upon the performance of any of the conditions in any one or more instances shall not be construed as a waiver or relinquishment of the future benefit of said condition.

**Entire Contract**

The parties acknowledge that each have read this Contract, understand it and agree to be bound by the terms. The parties further agree that this Contract is the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof and that it supersedes all prior proposals, representations, arrangements, understandings, and agreements, whether oral or written, between the parties with respect to the subject matter hereof.

This Contract may not be modified, amended, or in any way altered except by a written agreement duly executed by the parties and approved in accordance with the laws and established procedures of the State of Arkansas.

**Survival of Rights and Obligations**

The right and obligations of the Parties under this Contract shall survive and continue after the ending or expiration of the term of this Contract, and shall bind the parties, and their legal representatives, successors, heirs and assigns.

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**Notices**

All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if mailed by first class mail, postage prepaid, to:

\_\_\_\_\_  
(address)  
\_\_\_\_\_

Attention: \_\_\_\_\_  
(name of contractor contact person or such other name or address as may hereafter be furnished to Department in writing by the Contractor)

Notices to the Department should be mailed to:

\_\_\_\_\_  
(address)  
\_\_\_\_\_

Attention: \_\_\_\_\_  
(name of DHS contact person)

**Severability of Provisions**

If any one or more of the covenants, agreements, provisions or terms of this Contract shall be for any reason whatsoever held invalid, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Contract and shall in no way affect the validity or enforceability of the other provisions of this Contract.

**Certification Regarding Lobbying:**

The Contractor will comply with public law 101-121, section 319 (section 1352 of Title 31 U.S.C.) for an award in excess of \$100,000.00 by certifying that appropriated federal funds have not been or will not be used to pay any person to influence or attempt to influence a federal official/employee in connection with the awarding of any federal contract, grant, loan or cooperative agreement.

If the Contractor has paid or will pay for lobbying using funds other than federal appropriated funds, Standard Form-LLL (Disclosure of Lobbying Activities) shall be completed and included as an attachment to this contract.

**Certification Regarding Debarment:**

The Contractor, as a lower tier recipient of \$25,000.00 or more in federal funds, will comply with Executive Order 12549 (Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions).

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

- are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal or state agency
- where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled \*Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions\* without modification in all lower tier covered transactions.

I hereby certify that the Contractor is in compliance with Public Law 101-121 (Certification Regarding Lobbying) and Executive Order 12549 (Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions):

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Signature Date

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Printed or Typed Name and Title of Certifying Official

**Employment Practices Certification**

I hereby certify that the Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, color, religion, gender, national origin, age (except as provided by law) or disability. Contractor must insure that employees, as well as applicants for employment, are treated without discrimination because of their race, color, religion, gender, national origin, age (except as provided by law) or disability. Such action shall include, but not be limited to, employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection of training, including apprenticeships.

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Signature Date

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Printed or Typed Name and Title of Certifying Official

## **C. Sample Correspondence**

(DHS letterhead)

DISCLOSURE PRE-APPROVAL  
SAMPLE LETTER

(date)

Office of State Procurement  
Arkansas Department of Finance and Administration  
P.O. Box 2940  
Little Rock, AR 72203

RE: Executive Order 98-04  
Disclosure Requirements

Dear           (name of reviewing party)           ;

Attached is a copy of the Disclosure Form for: (provider's name).

This form indicates the following disclosure requiring pre-approval of DFA:

- 1.
- 2.
- 3.

**This agreement is a:** (grant or Professional/Consultant Services contract)

**The terms of the agreement are:** (beginning and ending dates)

**The amount of the agreement is:** (maximum liability)

**The procurement method for this agreement was:** (IFB, RFP, RFQ, Sole Source, Other. If Sole Source or Other, indicate brief explanation for the Sole Source or Other determination.)

**Please make a determination as to whether a contract with this provider is prohibited under EO-98-04. Please forward your response to:** (sender's name, title, address, and FAX#.)

Thank you.

Sincerely,  
(name)  
(title)  
(telephone number)

# REQUEST FOR SOLE SOURCE PROCUREMENT SAMPLE MEMORANDUM

## MEMORANDUM

TO: Joe Giddis, Director  
DFA Office of State Procurement

FROM: Rex Jones, Assistant Director  
DHS Office of Administrative Services

DATE: December 18, 2001

SUBJ: Request for Sole Source Procurement  
(re: Contract with American Center for the Study of Widget Policy)

**1. Why is this service needed?** Federal court enforcement of a settlement agreement which stipulated that a nationally-recognized “watchdog” organization be contracted for a five-year period to monitor this state’s implementation of standardized protocols for the delivery of widget services to eligible clients.

**2. What method(s) were used to determine that a lack of responsible/responsive competition exists for this service?** Binding federal arbitration resulting from a class action lawsuit.

**3. How was it determined that this provider possesses exclusive capabilities?** During federal arbitration, plaintiff counsel recommended this organization as the most qualified. The recommendation was accepted by defense counsel, validated by the arbitrator, and included in the resultant federal court decree.

**4. Why is this service unique?** It is a mandatory element of judicial enforcement of a binding federal arbitration agreement.

**5. Are there patent or proprietary rights that make the required service unavailable from other sources?** No.

**6. What would the agency do if the provider/service were no longer available?** Coordinate through the assigned federal arbitrator to determine a replacement oversight agency acceptable to the plaintiff’s counsel.

**7. Fully detail any program considerations that make the use of a “Sole Source” critical to the successful completion of the agency’s task.** If DHS fails to uphold the federal court decree pertaining to oversight of widget services, it will be held in contempt by the U.S. 8<sup>th</sup> Circuit Court of Appeals. Sanctions might include loss of the state’s share of federal funding from the Widget Service Block Grant (\$2,947,368 for FFY02), as well as assessment of actual and punitive damages to aggrieved clients.

(DHS Letterhead)

(date)

## SUSPENSION OF THE RULES SAMPLE LETTER

The Honorable \_\_\_\_\_, Co-Chairman  
The Honorable \_\_\_\_\_, Co-Chairman  
Committee on Review  
Arkansas Legislative Council  
315 State Capitol Building  
Little Rock, AR 72201

SUBJECT: REQUEST FOR SUSPENSION OF THE RULES  
(CONTRACTOR NAME)

Dear Co-Chairmen:

I am requesting a suspension of the rules in conjunction with the required review process for the attached Professional Services contract because negotiation of the terms delayed its submission. Consequently a suspension of the rules is necessary in order to expedite the contract's effective date of \_\_\_\_\_.

This contract, developed by the Department of Human Services, Division of \_\_\_\_\_, proposes to provide \_\_\_\_\_ (service) \_\_\_\_\_.

The Department of Human Services, Division of \_\_\_\_\_ has contracted with \_\_\_\_\_ since May, 1989 to assure that the Arkansas State hospital meets all applicable licensure, certification and accreditation standards and to ensure that appropriate high-quality care is provided to individuals who are voluntarily or involuntarily admitted to the hospital. The contractor specializes in the provision of psychiatric services and is highly experienced and committed to public sector medical services providing services to public hospitals throughout the country. The Department of Human Services, Division of \_\_\_\_\_ does not have the qualified personnel necessary to perform these services.

Your favorable consideration and review of this contract is appreciated.

Sincerely,

\_\_\_\_\_  
(DHS Director)